Studii Legalis Ratio,

OR,

DIRECTIONS

For the Study of the

L A W

Under these Heads;

The { Qualifications, Nature, Means, Method, Time and Place } of the Study

The third Addition, corrected and Enlarged, by *W. F.*

In hoc gaudeo, aliquid discere, ut decceam, Sen Ep Rectumater quod sero cognovi, & lassus errando viam aliis monstro. ib.

LONDON,

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TO THE

STUDENTS

OF THE

Common Laws

OF

ENGLAND.

Books, such as are worthy the name so Books, saith the Lord Bacon *ought to have no Patrons but Truth and Reason; I hope I may Justly lay claim to both, in this treatise. But*

the first having for a long time past been forced to the Reader, and Error leading the Van, had the fewest followers; the latter through Ignorance and partiality was in a manner lost: so that what was formerly limited to the Cretians, might have been well applied to this part of the World also in these latter times, that they were Κρῆτες ἀεὶ, *Brutes, and that evil too: and I doubt there is too much of that brutishness still remaining. I thought it therefore my safest course with his Lordship's leave, to crave likewise your Patronage hereof. Your Patronage, I say of whom it may be said in comparison with my self (*Si parvis licet componere magna *as* Tacitus *reports* Augustus *once said of* Lepidus *and* Asinius, Marcum Lepidum *(saith he)* dixerat capacem se aspernantem

tem

tem, Gallum, Asinium avibem sed Minorem. *Those that are able to undertake this task, despising it, and unwilling; I willing, but not able: Therefore do wish the same person, whose Abilities and Experience are answerable to the work, of whom we might say, as the same* Augustus *said of* L. Aruntius Quem dixerat *saith* Tacitus, non indignum & aulurum) *would take it in hand*

These few Observations being the Prodicts Temporis subsecivi (*as* Cicero *calls it the leaving of the business, lying by me in loose papers, partly out of desire of profiting others but I confess most of all out of the importunity of my friend the Stationer, who desired a Piece of this nature, I was content to draw them into this method (if it deserves that name) you now have them in.*

Of

Of what importance Books of this nature are, I leave to your self to judge: for I am confident, your selves being Judges, there is no small time spent by Students, at their first entrance on this Study in searching what and how to read: here they have both in some measure briefly shewed them, that they may have no Remora's and Lets in their ways, but chearfully proceed in their Studies. Galen *wrote a Book only to teach the method of reading his Works.* Paulus, Hipperus, Gribaldus, Ant, Rata, *and others, have not been wanting in their direction for the study of the Civil Law; but of ours, except Sir* John Dodderidge *and Mr.* Fulbeck, *there hath not one trod this path. The first of whom, if Death had not prevented, doubtless had produced a Piece worthy of such a learned Man, but therein he hath*

hath handled only, though indeed fully, one part of Study, to wit, the collecting of Principles and Maxims. The other, Mr. Fulbeck, *leans too much upon the Civil Law and where he touches the Common, he shews rather the matter then method of Study: but neither wants its worth. These I confess want much both of the matter and method of what might be done upon this subject; yet my willingness of contributing any thing to the advancement of this Science, though but a Mite, doth claim your favourable construction of my pains, remembring the old saying* - Est voluisse satis, *and be they never so despicable, yet there is nothing of so little regard, but hath somewhat of worth: for* Ne sit tua gratia parvis. *But I despair not of some profit hence to those that it is intended for, the* Tyrunculi

of

of this Study (for higher I do not aim.) From whom I hope to receive a favourable acceptance of my labour, who have to my detriment gone somewhat out of my own, to no other end, then to put them in their way. Valete, et dum de vestris studiis bene mereri conor, æqui bonique; hæc τὰ μικρὰ consulite.

Gr. Inne.

W. Phillips.

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Studii

Studii Legalis Ratio,

OR,

DIRECTIONS

For the Study of the

LAW

CHAP. I.

Of the Students Qualifications.

MANY applying themselves to the Study of the Law, without due and serious consideration of the Qualifications such a Student ought to be furnished withall,

have missed of that *content* and *delight* which is treasured therein, and instead thereof, have met with *trouble* and *vexation of spirit*, judging it to be *Studii non just morbum*, an inseperable incident to this Study: thinking it unattainable and full of difficulty, because they are not qualified for the same, according to that of *Seneca*, *Multis rebus in est magnitudo, non ab natura sua, sed ex debilitate nostra*: (Many things are difficult, not in themselves, but because of our weakness.) And certainly it can be no otherwise, where any undertake a Profession *invita Minerva*, (as we say) when both their Genius and Qualifications check them in their choice. For those things delight every man, and those only, which are Οἰκεῖα φύσει, as the Philosopher speaks, suitably fitted and accomodated to their Genius and frame of Nature.

Arist Eth 110 c 7

That our Student therefore may find the pleasure thereof answerable to his expectation; this Study must be his choice upon mature deli-

be-

beration following *Seneca*'s advice herein, *Considerandum est utrum natura tua agendis rebus, an otioso studio contemplationiq; aptior sit.* And this choice is matter of great difficulty, wherein a man carrieth himself diversly, and wherein he shall find himself hindred by several Considerations, which draw him into divers parts, and many times hurt and hinder one another. Some herein are happier then others, who by the goodness and felicity of Nature, have known both speedily and easily how to chuse; and by a certain good hap (or rather Providence) without any great Deliberation, are as it were wholly carried into that course of life which doth best befit them. Others not so fortunate, who failing *ipso limine* in the very entrance, and waiting the Spirit (or Industry) to know themselves, and in a good hour to be re-advised how they might cunningly withdraw their Stake in the beginning of the Game, are in such sort ingaged, that they cannot without shame recal themselves from

Epist

that which they have wilfully as inconsiderately undertaken; but indure much trouble in persisting therein, and so are constrained to lead a tedious and wearisome life full of discontent and repentance; and which is worst of all, lose both time and labour, spends there goods, and beats their brains, without any either profit or delight; and after a long time spent therein, know not how to give a reason why they are rather for this or any other Calling except because their Ancester professed the same, or that they were unawares carried unto it: which made *Seneca* say, *Pauci sunt qui consilio se suaque disponunt, ceteri eorum more qui fluminibus innatant non eunt, sed feruntur*: (Few advisedly dispose of themselves or their own, but like such as swim in Rivers, do not go, but are carried,) Whereas every Science requires a special and particular wit and habilities, according which every man ought to steer to course. *Hippocrates* saith, That his n's wit holdeth the like proportion

on

on with Sciences as the earth doth with seed, which though of her self she be fruitful and fat yet it behoves to use advisement to what sort of seed her natural disposition inclineth; for every sort of earth cannot without distinction produce every sort of seed: Answerable to that of the Poet,

Nec tellus eadem parit omnia, viribus illa
Convenit, hæc oleis, hic bene farra virent. Ovid

This choice being so difficult, that our Student may not herein miscarry, *Nec quicquam sequi quod assequi nequeat*, he must make a strict enquiry into these two things; his Nature, and the nature of the Study. That his nature, that is his capacity, temperature, and whatsoever he excelleth in, be answerable to the Study. *Id quemque decet quod est suum maxime, sic faciendum est, ut contra naturam universum nil contendamus, ea servata propriam sequamur*;

(Every man ſhould undertake that Calling which his nature lays moſt claim to, and attempt nothing diſſonant to the ſame, but follow the ſuggeſtions and frame of his own nature.)

The Knowledge and Qualifications requiſite in our Student are as the Waters; ſome deſcending from above, ſome ſpringing from beneath: the one informed by the light of Nature, the other inſpired by Divine Revelation.

C. Calun That from above, is the knowledge and *fear of God*, which the wiſeſt of men ſaith is the beginning of wiſdom. *Hoc ſit primarium, ut Juvenis dataras operam, ne (quod dicitur) impingat in limine, primum omnium numinis divini auxilium precetur, & in illius gloriam ſuorum ſtudiorum finem ſeu ad ſcopum referat*: and wherewith is neceſſarily conjoyned the true Worſhip of God, that which meer Nature (as corrupt as it is) in ſome meaſure inculcates. For all the world acknowledge a Deity; and Piety ſways them ſo, that though they

they unwillingly ſubmit to their Superiors, yet rather then they will be without a god, they will worſhip a Stock or Stone: Therefore ſaith *Cicero*, *Nulla gens neque eſt tam immanſuete, neque tam fera quæ non, etiam ſi ignoret qualem habere deceat deum, tamen habendum ſciat.* And *Seneca* ſaith. *Nulla gens adeo extra leges eſt projecta, ut non aliquos deos credat.* Whence thoſe Fictions of the Heathen Poets touching their *Elizium* and fields of happineſs: for men of honeſt and well ordered lives, and places of torment for thoſe that do any way neglect the bonds of their Religion. Neither hath Nature wanted arguments to inforce them here unto as appears by the writings of the very Heathens. For as God hath made us all things that are imperfect ſubject and ſubſervient to the more perfect, as the Elements to mixt bodies, mixt bodies to plants, plants to Brutes, Brutes and all things elſe to Man; therefore very Reaſon, and the order of Nature will tell us, that we ought to ſerve God, who is

Tuſc. Qu l. 1

perfection in the abstract. Nor is this service formal, more of custome then duty. Therefore did the *Romans* place this in the front of their Laws, as of greatest importance: AD DIVOS ADEUNTO CASTE; PIETATEM ADHIBENTO. And the same *Cicero* saith, *Cultus deorum optimus est idemque castissimus & sanctissimus, plenissimusque pietatis, ut eos semper pura integra, incorupta, & mente & voce veneremur.* And certainly, this piety becomes one of this profession (if not more) as much as any other whatsoever, Justice being the end of the Law. And *Cicero* saith *Pietas justitia quaedam est adversus Deos.* (Piety is but Justice towards God.) It is not only a vertue but the chief, saith *Aristotle*; it is the foundation of fidelity and humane society, without which the World would fall into confusion. *Pietate sublata, fides etiam, societas humani generis, & una excellentissima virtus justitia imo omnis probitas tollitur.* This brings along with it a quiet

sen proem ad controv

and

and peaceable conſcience a mind calm and compoſed, fit to encounter with the greateſt difficulties that in this ſtudy he may meet withal.

The knowledge and qualifications from below, are informed by the light of Nature, as either Intellectual, or Moral. The Intellectual are ſubdivided into Inherent or Innate and acquired. The qualifications Intellectual and Innate are four in number, divided according to the ends whereunto they are referred; for man's labour is either to invent that which is ſought or propounded or to judge that which is invented, or to retain that which is judged, or to deliver over that which is retained. So that they are four, that is to ſay, the faculty of Inquiry or Invention, of Examination or Judgment of Cuſtody or Memory, of Elocution or Tradition.

1. The faculty of Invention is very requiſite in our Student; which ſprings out of ſharpneſs of wit, and clearneſs of apprehenſion. Without this hability, none can be fit for this *Croke 277 peard and jones*

Profession; for a clear apprehension makes the mind receive the right and distinct Notion of the thing represented, as the clearness of a glass serveth for the admission of a more exact Image of the Face that looks upon it, whereas it be soiled or dim, it rendreth i her none, or an imperfect shape. Without this none of the particular Cases can be throughly sifted, or sufficiently set forth For considering the depth of knowledge reposed in the Laws of this Land, and that cases of much conformity and resemblance daily happen; sharpness of Apprehension is necessary, not only for the understanding of one, but also upon circumstances of matter to espy a difference in the other, and upon any sudden occasion to be able to reply to an adversaries unexpected Objections, to understand his Clients case at first opening, the drift of his adversaries reasons at the first urging, and likewise readily to invent and fitly to apply his provided arguments. If this faculty of Apprehension faileth, saith *Hippocrates* all

all other diligences are loſt for it is the In-let of knowledge. But it ought to be moderate: for too much ſharpneſs of Wit is prejudicial to Judgment and Memory: *Nihil ſapientia odioſius acumine nimio*: (Nothing is more dangerous to Wiſdom or Judgement than too much ſharpneſs of wit) for this over-ſharpneſs riſeth out of a hot and dry brain, which is of a contrary temperature to Judgement and Memory For, ſaith one experience ſheweth, that they that excel in Imagination, and ſharpneſs of Wit, are ſick in Judgement and Memory, and held for ools and frantick perſons. And the reaſon hereof is, becauſe the great heat that ſerveth the Apprehenſion, conſumeth both the moiſture which ſerveth the Memory and the ſubtilty of the ſpirits and figures which ſhould be in that drineſs which ſerveth the Judgement, and ſo it is contrary, and deſtroys the other two.

The faculty of Examination or Judgment, as Sir *John Doddridge* ſaith,

ſaith, is almoſt alone ſufficient to make a ready and able Lawyer This ſolidity of Judgement teacheth to weigh and try the particulars apprehended, and to ſever for uſe the pretious from the vile. For knowledge lies in things, as Gold in Mines; or as Corn in the Straw when by diligent inquiry after it we have digged it up and threſhed it out, we muſt then bring it to the fire and fan, to give it us purified from droſs and levity. Hereby is our Student enabled to perceive what is true, and what is falſe in every controverſie; not to be deceived or inveigled, nor to be unconſtant in opinion; well to deliver things conceived; and well to judge of them, which is the beſt part of a Lawyer. The Art of judgment excels the former herein for that is like a picture in Marble; that is engraven with difficulty, but is laſting; the other like a writing in the ſand, apt to take, unapt to keep, ſoon hot, ſoon cold. And this faculty of Judgment ſpringeth out of a cold temperature of the brain; where-

wherefore *Ariſtotle* ſaith, that ſuch as inhabit hot Countries are more ſolid and adviſed then thoſe that are born in cold Regions, becauſe the exceſſive heat of the Country fretteth and conſumeth the natural heat of the brain, and ſo leaves it cold, whereby man becomes to be of good judgement; whereby it appeareth that quickneſs of wit, and ſoundneſs of judgement are two contrary powers. And though our Student be defective in one of theſe, as of neceſſity he muſt, yet let him not deſpair, but comfort himſelf with this, that as they are contrary, ſo no man hath ever yet excelled in both, as appears in *Ariſtotle* and *Theophraſtus*; the one (as Sir *John Doderidge* ſaith) ſurmounting in ſharpneſs of underſtanding, the other that way inferiour, yet every way comparable in ſharpneſs of judgement. And of our own (to omit other) Sir *Anthony Brown* and Sir *James Dyer* Knights, both having been chief in their place of Juſtice, the one ſaith the ſame Authour, having an incomparable

parable sharpness of Wit, the other an irrefragable soundness of Judgement; to the attaining whereof nothing conduceth more then slowness of belief, and distrust; which are the sinews of wisdom: Nor is any thing more prejudicial to it, then precipitancy and impatience of delay, or attendance on the determination of Right Reason; which makes us common run away with half or a broken judgement. In which respect *Aristotle* in his *Ethicks* very elegantly compares it to a hasty servant, that go's away posting without his errant. Without this faculty of judgement; though a man were furnished with every thing else, he hath no more sufficiency to judge or plead, then the Code or Digest, as one saith, which compassing within them all the Laws, and Rules of Reason, for all that, cannot write one letter.

Examen de ingeniosis 1.

The faculty of Retention or Memory is the receptacle of the Apprehension, and is one of our Student's many natural indowments, without which he is a Lawyer to day and

and none to morrow for he is not like to grow rich, who lays up his treasures into a bag with holes. And the Muses are therefore said to be the daughters of *Jupiter* and *Mnemosyne*, which signifies memory, this being indeed the ground of Experience, and Experience the mother of Arts. And as Nature hath given to the bodies of men for the furtherance of corporal strength and nutriment, a retentive power to clasp and hold fast that which preserveth it, until a through Concoction be wrought: so proportionably is the faculty of memory given to Reason as a means to consolidate and inrich it. And Fluxes, as in the body, so in the mind too, are arguments and authours of weakness. What booteth it to *read much*, which is *a wearines to the flesh*? to meditate often, which is a burden to the mind? to learn daily with increase of knowledge, when he is to seek for what he hath learned, and perhaps then especially when he hath most need thereof? Without this, our Studies are but lost labour,

and

and our Student will be but another *Curio*, the Orator in *Tully*, who was wont when he had propoſed three things in an Oration, to forget ſome one or other of them, or to add a fourth. Or like *Calviſius*, *Sabinus* of whom *Seneca* ſaith, that being at vaſt charges in matter of learning, he was not yet able to retain faſt the names of *Achilles* or *Ulyſſes*. Yet if our Student be not furniſhed with this, or hath by any accident impaired it, or that it be otherwiſe deny-

Cicero de Oratore

Seneca Ep 27

In Proemio ad controverſias.

ed as the ſame Philoſopher tells us is eaſily, *Res eſt ex omnibus partibus animi maxima delicata & fragilis memoria, in quam primum ſenectus incurrit*: (Memory (ſaith he) of all the other faculties is the moſt nice and weak, whereof old age makes his firſt conqueſt:) Yet I ſhould not have him practice the Art of Memory, which, ſaith the Lord *Bacon*, though certain it is this art may be raiſed to points of Oſtentation prodigious, yet in uſe it is barren and burdenſome, and little leſs then dangerous and deſtructive to natural me-

memory. Nor is the repeating of a great many words, names or verſes, on once hearing, as *Seneca* could do as he tells us, *Duo millia nominum recitata quo ordine erant dicta reddebam, & ab his qui ad audiendum præceptorem noſtrum convenerant, ſingulos verſus a ſingulis datos cum plures quam ducenti efficerentur, ab ultimo incipiens uſque ad primum recitabam*: And *Cyrus*, of whom *Xenophon* teſtifieth, that he could ſalute all the Souldiers of his Army by their names, any matter of Eſtimation, but only of Strangeneſs without worth; neither is it dexterous to be applied to the ſerious uſe of buſineſs and occaſion. This faculty ſprings out of moiſture: for this makes the brain pliable, and the figures are eaſily imprinted: and this is evident in Children, which in their young years ſhall better con by heart, then in any other time of their life; for then doth the brain partake of greateſt moiſture: an inſtance whereof we have in *Seneca*, who ſaith, *Quæcunque apud illam* (ſpeaking

Plin l. 7. c. 24.

Cic. l. 1 de nat deor.

(ſpeaking of memory) *aut puer aut juvenis depoſui quaſi recentia aut modo audita ſine cunctatione profert: At ſiqua illa inter proximos annos comiſi ſic perdidi & amiſit, ut etiam ſi jepius ingenerantur, toties tanquam nova audiam.* (Whatſoever I have laid up in my memory when I was a child, or a young man, it produceth without delay, as if they were newly or lately heard: But what I have committed thereto within theſe later years, it hath ſo loſt them, that though I heard them never ſo often, I ſtill hear them as new matters.) Therefore in choice of Perſons for this Study, we ſhould do as Architects do in choice of fit Timber for building. They chuſe firſt the ſtraiteſt, and that which hath feweſt knots and flaws in it: which in the mind anſwereth to clearneſs and evenneſs of apprehenſion: for a clear mind like ſtrait and ſmooth Timber, will work eaſieſt Next, they take the heart, and ſtrongeſt ſubſtance, (and cut out the ſap) becauſe that is ſtrongeſt, and beſt able to bear weight

weight: and this answers to maturity and soundness of Judgement. Lastly, they use no Sallow, Willow, or Birch and such as are quickly apt to putrifie and wear away, but such Timber as is lasting, and retentive of his nature, Oak and Elm, and this answereth to the memory.

Elocution, or a prompt and ready delivery of the matter conceived, is another of our Student's natural Indowments. And Eloquence, saith *Cicero*, is a judicious fitting of choice words, apt and grave sentences, unto matter well disposed, the same being uttered with Manly moderation of the Voice, Countenance and Gesture, *&c.* A matter of no small consequence, being that whereby *Cesar* with few words quieted the Commotion of an Army! And *Pericles* and *Pisistratus*, even when they speak against the peoples Liberty, over-ruled them by their Eloquence to believe and embrace what they speak; and by their Tongue effected that which the Sword could hardly have effected. He must have

Cic. in pr Rhetor.

Suet. in Cæsar c. 3.

a

a delivery full of dignity, without affectation, agreeable to the matter in hand, and set forth with gravity. *Vero circa flosculos capturè turpe est*: the matter is to be minded more then the words; yet are not the words to be neglected on the one side, nor affected on the other side: *Sint verba electa, non captata*, for the nicety of words breaks the weight of an Argument, and therefore he is worthily called, *Hominem delirum qui verborum minutiis rerum frangit pondera*. Above all, he must have a care that the words be suitable to the matter in hand: *Res non verba componere, & animis dicere non auribus tantum*: If the matter be good and well ordered, he shall not want words: according to that of the Poet,

A. Gue

Horat de art Poet

Rem bene depositam vel verba invita sequuntur.

And it will be no small advantage (being indeed good policy and discretion) for him to have his Speeches composed and premiditated.

Cujus

Cujus oratio ſicut vita debet eſſe compoſita. And to truſt to invention and memory is no part of prudence: for thoſe that hazard theſe, are with the leaſt commotion put to a *nonplus*. Though it is reported of *Severus Caſſius*, that he ſpake beſt *extempore*, and without meditation; and that he was more beholding to Fortune then Diligence; and to be interrupted in his ſpeech redounded to his profit and then his adverſaries feared to urge him leſt his ſudden anger redoubled his Eloquence. But he is but one, and one Swallow (as we commonly ſay) doth not make a Summer. And our Student is herein to avoid over much boldneſs and confidence, nothing adorning it more then an humble ſubmiſſion of matter of doubt, even then when by Argument or Proof it is moſt fully cleared. The Philoſophers rule is *Sit oratio preſſa non audax*: if it be weighty, it will pinch of it ſelf, without any confident application or aſſertion. Sen.

And herein he muſt likewiſe avoid all

all passion, and shew thereof; for that puts all into confusion. *Iracundi hominis iracunda est oratio, & commoni nimis incitata.* This passionate kind of speaking hath three bad effects: 1. It discomposeth the Speaker, being often at a loss of the matter he intended to utter. 2. It taketh away much of the force and weight of the same, the speech being as it were put out of the joynt, especially if it were by way of Argument and Proof, one part depending upon another. 3. It taketh away the grace of the delivery. Therefore must his speech be mildly and pleasantly delivered passing by all occasions of anger if any be given; and then shall he have *verba apte contexta et oratio leniter fluens.* And that our Student may think this worth his while let him hear *Seneca* who saith, *Est decor proprius orationi leniter lapsa*; and saith *Aristotle Magna sunt vires nitide ornateque, orationis.* His words must not crowd one another in the delivery, but slow smoothly and softly. *Hoc ego in viro*

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ſapienti recipio, non exigo, ut oratio ejus ſine impedimento exeat, proferatur tamen malo quam profluat. ſumma ſummarum hec erit, tardiloquum te eſſe jubeo. (This I accept of, but do not require in a Wiſe man, that his ſpeech flow without impediment, but his words ſhould be rather drawn then run from him. In ſhort, I would have thee be ſlow of ſpeech) To ſpeak well, and much, is not the work of one man; for they that abound in words are barren in good ſpeech: like Trees that are full of Leaves, but yeild little Fruit. Great Speakers are like Waters and Veſſels, which, the ſhallower and emptier they are, do make the louder noiſe; and the ignorance and confidence of ſuch Speakers is uſually diſcovered in their vain and empty Tautologies; which is the reaſon the Orator obſerves, why they are uſually more copious then far learneder men. *Quia doctis eſt electio et modus*, becauſe able Speakers uſe choice, and judgement in what they produce. And fluent utteranc

cannot find place in Men of great knowledge: an instance whereof we have in *Socrates*, *Plato*, *Aristotle*, and others, who though of great knowledge, yet had not the gift of Eloquence, their words having but a slender ornament, and themselves a simple manner of delivery. Whereas on the other side there is nothing solid, their speeches most commonly be like Spiders Webs, curious but thin, and the sudden flashes such use to adorn themselves withall, are like rotten Wood in the dark, of more shine then substance, whose use and ornament are like themselves, swift and vanishing, at once both admired and forgotten. His care is likewise that his speech be gentle and pleasing, not crabbed, harsh and envious, and therefore acute and subtle Questions are to be avoided, as likewise constrained Allegories, Allusions and Similitudes, for these resemble Crab-fishes, where there is more picking work then meat to eat, and their ends are commonly brawls and contentions.

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In a word, *Animi et ingenii celeres esse debent, qui ad excogitandum acuti, ad explicandum ornandumq; sint uberes, et ad memoriam firmi et diuturni.* Yet if herein our Student be defective, let him not despair; for Sir *John Doddridge* saith, I know no cause why we may not say the same of our Lawyer, which he (meaning *Cicero*) saith of the Philosopher, *Philosophum si afferat eloquentiam, non esse ab eo flagitandum, dum beat, non esse ab eo flagitandum, dum tamen complectatur verbis quod vult & dicat plane ut intelligatur.* (If a Philosopher be eloquent, we ought not to despise him; if he be not, he must not affect it, so that he can comprehend in words what he conceives, and speak them plainly, that he may be understood.) And some defective herein, have notwithstanding attained to no little Eminence in their Profession: witness Sir *Thomas Hatley*, who in his Reports speaking of Iergeant *Athow*, gives him this *Encomium*, That he was a man somewhat defective in Memory and

elocution, but of profound judgement, and great Skill in pleading.

The next are the Qualifications Intellectual and Acquisite, wherewith our Student ought to be adornned, and of those, first, Learning in general is a necessary ornament; (if I may so say) though I confess the objections that have been made against it *multum habent ponderis*; to instance a few, as, 1. That some men have been eminent herein, yet furnished with no other learning then what their natural parts afforded. And, 2. That Law is the Science of Sciences. *Lex non est tantum Scientia, sed scientificissima*, saith *Plato*, and consequently comprehends all other Sciences, at least as far as they are requisite, and those need not be fetched elsewhere.

-----Nam te quæsiveris extra.

And as Sir *Henry Finch* saith, the sparks of all Sciences in the World are taken up in ashes of the Law.

And

And 3. That the Law is *multorum annorum opus* (a Study that requires no ſhort time for perfection) and conſequently there is no ſpare time for other Sciences. But as on the one ſide I grant it no matter of neceſſity yet on the other ſide it is a matter of ornament, and conduces much to the underſtanding of the Reaſons of the Law. For though ſome have been excellent herein, without the help of other Sciences, in regard of their great natural gifts, yet it doth not follow that all may arrive that eminency, if ſhort of their natural indowments; knowledge of other Sciences being as a guide to lead him to perfection in this. And it is probable thoſe eminent perſons might have been much more excellent, if they had been aſſiſted with the helps of other Learning; the want whereof gave occaſion to ſome as Sir *John Doderidge* ſaith, to call them *Doctum quoddam genus indoctorum hominum.* And alth ugh the Law doth comprehend other Sciences yet are they

borrowed, not Inherent or inbred in the Laws, and therefore most fit to be sought, and better understood in their proper choice, *Dulcius ex ipse fonte bibuntur aquæ.* And although the Journey be long, and the Time short, (*Ars longa vita brevis*) as *Seneca* saith, yet the Maximes that the Law hath borrowed from other Learning, when they are viewed in their proper Sphear, are best understood, both for Nature and Extension, and easiest apprehended, and so make some amends for the time that is bestowed in inquiring into them. And this Science being written in three Languages, to wit Latine, French and English, as *Sir John Fortescue* tells us, *Leges terræ illius* speaking of England) *Triplici lingua addiscantur videlicet, Anglicana, Gallica et Latina* The knowlenge of the Latin Tongue is very requisite in our Student, without which he cannot understand many Old Statutes and Antient positive Laws, which were written in that Tongue; as the Statutes of

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Magna Charta Westminster the second, and many other, as likewise the antient Wrighters, viz *Glanvil*, *Bracton*, *Fleta*, *Hengham*, *Fortescue*, and others, and likewise all Writs and Pleadings. The like may be said of the French Tongue, wherein all the Annals and Year-books, and indeed the most Part of the Law is written; a Language obtruded on us by the Conquest, wherein the Lawyers were wont to Plead, till by the force of the Statute of 36. E. 3. c. 51. that Custom was restrained: and the Exercises of our Students at the Inns of Court are performed in this Tongue, and most of the Tearms of this Science taken out of this Tongue; and indeed, cannot be so properly expressed in any other Language whatever.

The next that our Student ought to be furnished withall, is the arts of Grammar, whereof the Lord *Bacon* saith, that as man hath striven against the first general Curse, by the invention of all other Arts so hath he sought to come forth of the second

general curse, which was the confusion of Tongues, by the Art of Grammar. Hereby is our Student taught Orthography and Etymology. The first is a matter of great consequence, witness the mischief the want thereof produceth. A *Scire*
2 E 3. 7 *facias* abated, for that the Writ was *ex insinatione*, being no Latin word; whereas it should have been *ex insinuatione*. So a *Precippe quod reddat* abated, because *Hæri* for *Hæredi*. The like in a Writ of Wast, because *ad destrictionem* for *ad destructionem*: and an Indictment quashed, for
Coke Rep 1 H 10 T n B 166 having *Burgaliter* for *Burglariter*, being though no Latin, yet a word of Art. The second is very necessary, not only to the affording of Arguments of great weight, but also gives much light and delight in the apprehension of the terms and words of Art: *Dicebatur finis* (saith *Littleton*) *quia finem litibus imponit*: And the Lord *Cook* upon him adds, After the example of *Littleton*, it is good to search out the Etymology and true derivation of words; for

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Ignoratis terminis, ignoratur & ans. and thus in his Commentary on *Littleton* hath he put in practice, as appears in his Etymology of *Vicecomes quia vicem Comts supplet*; Sheriff, of Shire-Reeve, *perfectus Comitatus*; *Bastardus*, *a Greco verbo* Βάσαρις, *meretrix*, *fol.* 16. *a. Admiral*, *from the Saxon*, *Aen mereal*, over all the Sea, 260. *b. Pyrate*, from the word πειράτης, Rover at Sea, 391. as likewise *Alien Leigeance*, 129. *a Burgage* 108. *b. conformation*, 295. *b. Count.* 17. *a Dean*, 95. *a. Disparagement*, 80 *a.* Homage, 64. *Heir* 7. *b. Marshal* 74. *Escheat*, 13. *a Prerogative*, 90. *b. vid.* 61. *a.* 18. *b.* 1. *a.* 322. *b.* 226. *a.* 116. *a.* 168. *b.* 205. *a.* And many more which for brevity sake I omit.

The next in order is Rhetorick, which is without doubt a great ornament, and as Mr. *Fulbeck* saith, a pleasant thing, and full of delight, but to dwell too much upon it, in Professors of Gravity, is neither comely nor commendable, being indeed below their profession, their

Study being for the general good, and commodious Government of the Commonweal. And if any man reprove these Professors, for want of sharpness of invention, and fineſs of Wit; let him be well advised, and consider the substance of their works & he shall find that they carried *Mercury* in their Brain, and not on their Tongue; and that they wanted not Wisdom, though they were defective in Rhetorick. But this bordering upon the next, as *Aristotle* saith, *Ars quam Rhetoram vocamus ad dialecticam referter seu sobolem ejus, & tanquam membrum quoddam adnascens:* we proceed thereto and that is

The Art of Logick, which is a necessary Qualification in our Student, notwithstanding the cavils of some that we are Logicians by Nature, and that there is no use of Syllogistical Arguments in Law. In respect whereof, well hath one said, *Quod nulla scientia absque dialectica ratione comparari potest*, For it is an Art that defineth and openeth the Nature of Things; divideth the

Whole

Whole into Parts, ſheweth the coherence and deſpendance of Things, judgeth of Truth and Falſhood. *Ex qua*, ſaith *Cicero cum ſumma utilitate exiſtet ad res ponderandas, tum maxime ingenua delectatio & digna ſapientia.* Nor do we want teſtimonies of our own herein. For the Lord *Bacon* tells us, that it is a Science excellent, the end whereof is to teach a form of Argument, and to ſecure Reaſon: And the Lord *Cook* ſpeaking of that famous Lawyer *Littleton*, amongſt other things ſaith, that he was learned alſo in that Art which is neceſſary to a compleat Lawyer, I mean Logick. And likewiſe Juſtice *Dodderidge*, who hath diſcourſed at large hereof, ſaith This Art teacheth our Student to collect the Axiomes, Grounds and Rules obſerved in that Art which he ſtudieth; and being ſo collected fitly to diſpoſe thereof, which yeildeth diverſity of Matter, and ready Furniture for diſpute. And likewiſe it teacheth him in his Arguments to demonſtrate and ſtrengthen his Opi-

nion, in defining the thing disputed of, to divide the same into parts and distinguish the divers significations of the words, as to search the difference of Matters and Cases proposed. *Littleton* maketh use of this about the word *Assize*, affirming it to be *verbum equivocum equivocam*: And thus *Assize jurata* is *equivocum equivocatum*, &c. So doth he likewise through his whole Book of Terms, as appears by his many Syllogisms, Inductions and other Arguments, and his Definitions, Descriptions, Divisions, Etymologies, Derivatives, Significations, and the like. Hereby likewise is our Student inabled to resolve his Arguments into better form, and to make them thereby the more convincing; and how to apply those Authorities that are not directly in the point, but by inference. But our Student must not dwell too much upon Logick, nor tamper therewith, striving to bring the Law into a true Logical method, which is impossible; or at least not without great difficulty:

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and when done, hardly worth the time lost thereby: witness *Seneca*, who told his *Lucilius*, *Non vaco ad istas ineptias*, (I have no time to spare for such niceties.) Whereof saith Master *Fulbeck*, some do spend a whole Decade of hours in doing nothing else, then seeking out the proper genius and difference of one only thing, and when they have done, they are scarce so wise as they were before, but may say of themselves as *Gentilis* speaketh of them very fitly *Confidentia astra petimus, ruimus in precipitia.* Logick is therefore requisite to the Study of the Law, yet not so as to tie every thing thereto, Logick being ever more given to form and words, then matter and substance which some good Scholars infected withall, make none of the best Lawyers; *circa flosculos occupati*, (dwelling upon flourishes.) Our Student shall do well to follow the Authors advice (I mean *Seneca*) herein, *Prospicienda ista sed prospicienda tantum & a limine salutanda. Hactenus utilia animum si preparent, non detinent*

Abber in Gentil. l 4 de jur.

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tamdiu enim istis immorandum est quam diu nihil animus agere majus potest, rudimenta sunt nostra non opera
These things are to be looked into, and no more, and saluted at the Entry, They are thus far Profitable, if they prepare, not detain the mind for we ought not to make our abode with them any longer, then we are fit for greater Things: they are our Rudiments not our Works.) And though our Student be not skilled herein, yet if he be seen in Rhetorick that will supply this defect, for Logick differeth from Rhetorick only as the Fist from the Palm, the one close, the other at large. And the difference is good which is made between Orators and Sophisters, that the one is as the Grey-hound, which hath his advantage in the Race, the other as the Hare, which hath her advantage in the Turn. So as it is the advantage of the weaker Creature. And if our Student want both, yet let him not despair but *Studeat toto animo*, as Seneca calls it, for the Law is no other then Reason, and if our Student have but

but a good ſtock of this, let him improve it to the utmoſt, and he will in a ſhort time prove a true Logician; for Logick is but Reaſon in an Artificial Dreſs. Therefore ſaid *Ariſtotle Hommes a natura Dialecticos et Rhetoricos eſſe.* (That men are Logicians and Rhetoricians by Nature.) And Mr. *Fulbeck* after a diligent enquiry tells us, that this Artificial (or if you pleaſe) Art of Logick is not neceſſary to a Lawyer; Nature it ſelf informing him ſufficiently herein: eſpecially the Arguments of this Profeſſion being not tied to Artificial Concluſions; but is to be left to them, *Qui nodum in ſcirpo querunt,* (Seek a knot in a Bul ruſh) fight with their Shadows. Neither is an exact knowledge of the Art requiſite in a Lawyer it is ſufficient if he have ſo much as will ſerve his own Profeſſion; for ſaith the, *Neque tamen exactam adec omnium diſciplinarum notitiam a perfecto nris profeſſore petimus, ſa is eſt cum eſſe cjus de quaſermo fuerit non inſcium* C. Catiune *de ſtudio juris.*

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Of the Moral Qualifications requiſite in our Student, the firſt is Gravity; this of all other beſt becoming him, to whoſe Profeſſion Gravity it ſelf lays claim: and hereby ought he order both his Geſture and Habit. Of the firſt there ariſeth no ſmall advantage this orders the wiſdom of converſation, which as it ought not to be over much affected, ſo much leſs ought it to be deſpiſed for it hath not only an honour and reſpect in it ſelf, but an influence alſo into buſineſs; therefore ſaid the Ovid Poet.

—Nec vultu deſtrue verba tua.

And as many hereby deſtroy the force of their words, ſo likewiſe may it be done of their deeds ſaith *Cicero* recommending to his Brother affability and eaſie acceſs. *Nil intereſt habere oſtium apertum & vultum clauſum.* So *Atticus* before the firſt interview between *Cæſar* and *Cicero*, the War depending did ſeriouſly adviſe *Cicero* touching the compoſing

ſing and ordering of his Countenance and geſture. For as the tongue ſpeaketh to the ear, ſo the geſture ſpeaketh to the eye; and therefore many ſubtle perſons, whoſe eyes do dwell upon the faces and faſhions of Men, do well know the advantage of this obſervation, being indeed the moſt part of their abilities: neither can it be denyed but that it is a great diſcoverer of the affections and a great direction of buſineſs: for as the humours and effects of the body do alter or work upon the mind, ſo the paſſions of the mind do alter and work upon the body. The outward behaviour. and the private and ſubtle motions and labour of the countenance, ſaith *Cicero*, is *animi janua*, (the gate of the mind.) None more cloſe then *Tiberius*, and yet *Tacitus* ſaith of *Gallus*, *Etenim vultu offenſionem conjectaverat*; that anger that he miſſed in his ſpeech he found in his looks.

The ſum of behavionr is to retain a man's own dignity, without intruding

ding upon the Liberty of others. But if Behavior and outward Carriage be intended too much, it passeth into Affectation, and then, *Quid deformius quam scenam in vitam transferre!* (To act a mans Life,) and although perhaps it produceth not into that extream, yet it consumeth time, and takes up more room in the mind then conveniently it might. And certainly, the intending of the discretion of Behaviour, is a great Thief of Meditation, neither is there a greater impediment of Action then an over curious observance of Deceney, and the Guide of Decency, which is Time and Season and such as are accomplished in that humour of Urbanity, please themselves in the name, & seldom aspire to higher vertue, whereas those that are defective herein, do seek comelines by reputation. His Habit likewise ought to be decent and neat, not gay and apish: nor may he spend any part of the time allotted for study, in a curious and antick Dress, which after all the pains bestowed, doth not be-

become a man. *Non est ornamentum virile*, saith *Seneca*: but this ought to be left as peculiar to those weaker Vessels, Women, to dwell and be wholly intent upon the out-side; in which respect I believe *Plato* thanked God that he was not made a Woman. *Moribundos* Plato *naturæ gratias egit quod mas fuit non fœmina.* Neither is it only an effeminate part, but is likewise a sure sign that they are frothy and empty, and accordingly resolved to put a good face upon the matter, and Peacock-like to place their worth and excellency in their out-side, of whom the same *Seneca* saith: *Nosti complures juvenes, vesti & coma nitidos, de capsula totas nihil ab illis speraveris forte, nihil solidum.* And as on the one side this is to be avoided, for we have a Philosophers warrant, *Licet spere sine pompa*: so on the other side, Decency and Neatness is not to be neglected, being that preheminence which Nature hath bestowed on us: *Mundæ vestis electio appetenda est homini Natura enim homo nitidum & ele-*

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gans animal eſt. To conclude, Behaviour is as it were the garment of the mind, and it ought to have the conditions of a garment, for it ought to be made in faſhion, it ought not to be too curious, it ought to be ſhaped ſo as to ſet forth any good making of the miud, and hide any deformity; and above all, it ought not to be too ſtrait or reſtrained for exerciſe or motion. In a word, *Sit modeſtus inceſſus & compoſitus, ac probus vultus, & conveniens prudenti viro geſtus*: Let the gate be modeſt and compoſed (for ſaith rhe Poet, *eſt & in inceſſu pars non temnenda decoris.*) the countenance honeſt and chearful, and the carriage that which becomes a diſcreet and prudent man)

The next is Temperance, as it is generally taken for a moderate and ſweet temper in all things. It is not only a Vertue, but a ſeaſoning Sauce of all the reſt. This curbs the inſatiable deſire of worldly things, and keep. him from the unquiet and careful pleaſure of covetouſneſs

touſneſs and ambition, it will free him from the tormenting condition of thoſe, *Quos divitiis per ſummum acquiſite ſuderem male habent, quos honores nulla non arte atq; operi petiti diſcruciant*: (Whom wealth gotten by the ſweat of their brows will not ſuffer to reſt, and whom honour attained unto by right and wrong do diſquiet.) And herewith, as an inſeparable companion, is always joyned that neceſſary ornament of a Lawyer, to wit, Patience: *Virus contumeliarum & omnis adverſitatis impetus equanimiter portans*; paſſing by all affronts and offences whatſoever: the want whereof is no ſmall diſadvantage. For impatience is as a Rack that urgeth men to confeſs their ſecrets, carrying them indeed beyond themſelves, *Vino tortus & ira.*---------- *Tiberius* himſelf, who though a cloſe man, and of reſerved paſſions, yet being ſtinged and incenſed by *Agrippina*, he came a ſtep forth of his diſſimulation, and this paſſion quite altered his nature, *Et Tacitus veram occulti pectoris vocem elicuit.* annal l 1

Nam ideo lederetur quid non regnare
He brake forth into words ſtrang and unuſual from ſo cloſe a diſpoſition, to wit, Whether ſhe were wronged becauſe ſhe did not Reign, as *Tacitus* obſerves. There is not any paſſion that ſtandeth more in need of moderation then this doth both becauſe it is one of the frequenteſt that we are troubled with, and the moſt unruly, as that which doth bear a ſway over the reſt, and of all other hath the leaſt recourſe to Reaſon: and hence is it, that the moſt ignorant are moſt affected with this paſſion, Οἱ λογισμῷ ἐλάχιστα χρώμενοι θυμῷ λείπεται εἰς ὀργὴν καθίστασθαι. Thoſe that make the leaſt uſe of Reaſon, are moſt carried away with this paſion. And it doth not only prejudice buſineſs; as to carry men inconſiderate to every thing, and put them wholly out of frame, ſo as not to be able to do any as they could, as *Cicero* ſaith, *Semper ira procul abſit, cum qua nihil recte, nihil conſiderate fieri poteſt, nec ab eis qui ad ſum prob ri*: (Let impatience be always far from you, by reaſon

reaſon whereof nothing can be done either rightly as it ſhould, or conſiderately;) for thoſe things that are done in heat cannot be ſo reſolutely performed, nor approved by them that are preſent: But it is likewiſe prejudicial and hurtful to the body; for ſaith *Seneca*, *Iræ exitus furor eſt, et idco iræ vitanda eſt, non immoderationis cauſa, ſed et ſanitatis*: The end of Choller is Madneſs, therefore ought to be avoided, not only for moderation, but alſo for healths ſake) This one defect, where it gains footing, ſhall marr all other Virtues and Parts, be they never ſo excellent and adorning. The next is Modeſty, that he be not over-confident and peremptory in his words or Aſſertions, nor giving to much boldneſs and Obſtinacy in his Determinations. Yet on the other ſide, too much Baſhfulneſs is not commendable in any; unleſs a Young Man, as *Seneca* ſaith for then it is *Signum virtutis*. Yet are many of ſuch a ſoft and facile Conſtitution, that the leaſt Contradiction of their Diſcourſe, though in a known truth,

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presently riseth their blood in their face. *Durat ad hæc perversa recti verecundia*, as the same *Sen. ca* saith, and he, maugre his Stoick Apathy, was forced to say, *Invitus erubesco.*

Hereunto we may add Humility, whereby our Student may avoid preposterous Reading, not to be puffed up with knowledge, which conceit once admitted, makes him Neglect all industry, because in his own opinion he hath arriv'd already at the heighth of learning and knowledge. *Multi ad sapientiam pervenissent nisi se jam pervenisse putassent*, (Many had arrived to wisdom and knowledge, had they not thought themselves there too betimes.) And if that knowledge which they falsly fancy in themselves, were true as they would have it, yet *Maxima pars eorum qua scimus, est pars minima eorum que ignoramus*: (The greatest part of what we know, is the least part of what we know not.) Such a man is yet to seek, nay he is hardly yet in the way to knowledge. And this Study being *multorum amorum opus*

opus our Student must be willing to learn from every body, and think none so mean, but that they have something worthy the learning. And though our Student fancy that he knows more then others, yet he must needs think that others know some things that he doth not. *Prudens* (saith one) *omnes libenter audit, omnia legit, non Scripturam, non personam spernit ab omnibus indifferentur quod sibi deesse videt quarit, non quantum sciat, sed quantum ignoret considerat*: (A wise man hears every man willingly, and reads all and doth neither despise the person, nor the writing, but seeks indifferently from all what he sees wanting in himself; nether doth he so much consider what he knows, as how much he knows not.) And some there are that flee so high of a sudden that they count it a disgrace to learn from others, but would be content to begin and end their Study at once: wherefore saith one, *Scio quosdam esse qui statim Philosophari volunt*: (Some (saith he) would be Philosophers in an instant.)

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He muſt not therefore nouriſh any high Opinion of his own Abilities; much leſs ſo to be in love with his own, as to ſet light by all other mens parts, how excellent ſoever, with a *Quanto melius tu hæc feciſſes?* And laſtly, let him know this to be an infallible Rule, That to boaſt or talk much of ones Knowledge, is a ſign of Ignorance, and that invincible too.

And laſtly that which gives a grace to all the reſt, is Courteſie and Affability, which is a neceſſary Qualification in our Student. This is that which illuſtrates and adorns all other Gift:. This begets Love and Friendſhip, whence comes Conference, the Life of Study. Therefore *Ariſtotle* gives it no other name then φιλία, (Friendſhip) And ſaith *Cicero*, *Diffic le enim dictu eſt, quantopere conciliet homines comitas, affabilitaſq ſermonis.* And well doth it deſerve the name of Friendſhip, in as much as it doth excell it; for Friendſhip is by reaſon of the Love that is joyned with it but this is ἀφιλία, *ſine amoris*

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ris affectu, and Friendship is onely towards our Acquaintaince, but affability and Courtelie is *æque erga notos & ignotos, æque etiam erga eos quorum familiaritate utimur, atq; erga eos quorum familiaritata non utimur*, Hereby is he preserved from Sullenness, Morosity and Peevishness, that he offended no man hereby, *Hunc habere sibi propositum, neminem offendat aut potius ut delectet*. And herein there is a means to be observed, that on the one side our Student do not fall into an ἀρεσκείαν too great a desire of compliance, who laying aside all Gravity, Decency and Honesty, approve of all the Deeds of others, or at least feign themselves so to do be they never so foul or unbecoming, observing no other name then θωπείαν of Flattering Parasites. Nor on the other side into a δυσχέρειαν, a vein neither of pleasing nor approving of any Person or Actions, who either hate Society, or given to Company at any time, they are sullen, and will neither in good and civil Discourse, or so much as a cheerful Look, comply

with others, but rather disaprove or reprove every thing and that with a peevish and biting kind of Speech, rendring themselves no ess odious then troublesome to their Companions. *Inter utrumq; tene*, Discretion must guide him therein, to whose Direction we leave him. And having done with his Qualifications Intellectual and Moral, there are some Conditions (as we may call them) not falling under either of those Heads, very requisite in our Student, for his well being, whereof briefly.

The first is an inclination to this Study. *Eo inclinandum quo te vis ingenii defert.* Without this whosoever attempts this or any other Study or Profession whatsoever, doth but labour in Vain: and if the Reason hereof be but considered, here is no cause of wonder; for the same Philosopher tells us that *Coacta ingenia male respondent, et reluctante natura irritus labor est.* This was the Reason that *Isocrates* laying hands on *Ephorus*, drew him from the Court of Judicature, knowing him

Senec

to

to be inclined to and fitter for another employment: *Iſocrates Ephoram* Senec. Ep. *infecta manu aſero ſubduxit utiliorem componendis monumentis hiſtoriarum ratus.* And for any to attempt this Study *invita Minerva*, as they ſay is plain folly; nor can it be imagined that any man with a loathing mind and forced induſtry, can compaſs ſuch a laborious Study, not being able to take any Delight therein. Whatſoever ſuch a man doth, is but to plunge himſelf the deeper in Difficulties: whereas on the other ſide a propenſity to the Study renders the Work leſs tedious, the pleaſure that the Student finds therein far exceeding any trouble or vexation whatſoever. And this delight in the Study, makes the Student throughly to underſtand and apprehend the ſame, and it doth not onely dilate the Spirits, but doth alſo quicken the Memory, according to the ſaying, *Quæ magni æſtimamus, memoriæ influimus* (What we have a high eſteem ofwe faſten in our Memory) in a Word, without inclination to a Stu-

dy, there can be neither pleasure nor proficiency therein.

The next Condition requisite in our Student is a solid, settled and constant Mind without which it is impossible for him to make any profitable progress in this Study. For the Cases being so Intricate, and the Reasons hereof so deep and weighty, a wavering and unsettled Mind cannot attain to the Apprehension thereof; being herein like the Mathematicks, wherein if the Mind be caught away but for a moment, he is to begin a new. One of such an unsettled Mind, is not capable of Meditating and Ruminating upon those things that it hath with difficulty apprehended, as to fix it, and make them its own. *Qui ex aliis in*

Seneca. *alia transiliunt, aut ne transiliunt quidem sed casu quodam transmittuntur quomodo haberequicquom certum mansurum ve possunt, suspensi & vagi* And this unsetledness and inconstancy is *signum vacillantis animi & non; unum tenentis tenorem suum*; in Seneca's Stile, it produceth diverse and contrary

contrary thoughts, *alliis alionitentitibus* which like diverſe and contrary Diet hinders Digeſtion, no thought ſmothering the other, not ſuffering him to have the leaſt Benefit of any His Body is among his books but not his mind or if reading, doth not ſhew himſelf attentive and diligent, but doth either number the Tiles of the Houſe, or build Caſtles in the Air, or doth nothing leſs then what he ſhould do: his thoughts being much like good Wemens talk at a Goſſiping whereof *Seneca* tells us, *Varius nobis fuit ſermo ut in convivio, nullum rem uſq; ad exitum adducens ſed aliunde transiliens,* And hence ariſeth raſh and haſty Judgment, and ſlight cenſures of weighty Matters, which is the fault of too many, not conſidering that which *Fabius* ſaith in *livie, Omnia non properanti clara certaque fiunt feſtinatio improvida ac cæca eſt,* and therefore is rightly termed *noverca ſcientiæ.* (The Stepdame of knowledge) *Cum ſeriis ſerio agendum*: this Study being built upon the Perfection of Reaſon, requires Fulbeck

a conſtant and ſerious Meditation: and what we apprehend *altius quotidiana meditatione figendum eſt*, That being faſtened in our Minds, and the Reaſon thereof fully conſidered, *Halitus ſiet quod eſt impetus.* That bringing it within the Verge of his own reaſon, he may upon the leaſt ſummons find the reſult thereof: In Order hereunto, our Student is to have a great care that his intent Study do not put him into a loathing, and infect him with thoſe melancholly Humours that ſome are troubled withal, liking and nouriſhing moſt thoſe thoughts that are furtheſt from their intended Profeſſions, building Chimera'es of their own imagination, and yielding themſelves to their obvious fancies and imaginary wiſhes and pine away their thought in empty Velleities which are but *motus in vacuo*, like *Noah*'s Dove, finding no Place for her Feet to reſt on, empty indeed, being ſuch as are ſo far from enjoyment, that they addreſs no endeavours towards the ſame, *Concupi*

ſcunt

scientiam, & quæ non possunt. This will in a short time take away his Appetite and bring a loathing upon this and all other Studies; and not onely so, but it blasteth that precious Flower of our Students Garden, I mean Memory, for it impresseth so many figures upon the Brain that the *Actus reminiscendi* is hereby confounded, and makes him an Old Man before his time: for Old Mens Memories are full of so many Figures of things, which they have seen and heard, in the long course of their Life, that when they would bestow more therein, it is not capable thereof, for it hath no void Place where to receive it. And the many projects that such Humourists heads are troubled withal, make them so look forwards, that all that passed is forgotten; which made the same Philosopher say *Futuro imminentium caduca memoria est.* Our Student therefore is to use his utmost endeavours to compass and settle his Mind. *Et primum compositæ mentis argumentum est, posse consistere et cum morari.*

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The next is Diligence in peruſing of his Study: for *Stratum eſt aſſidua ac ſagax retractio cogitationis.* And the Books and Caſes are ſo many, long and intricate, which muſt be raed & diſpoſed for our Students future Practice, that it cannot be compaſſed without unwearied Dilligence Nor can the vaſt body of the Law be reduced into a narrower Compaſs; which if it were poſſible, yet would it be no great advantage: for my Lord *Cook* ſaith *Compendia ſunt diſpendia.* But indeed it is impoſſible, unleſs he can likewiſe take away the infinite and inumerable Affairs and Actions of men, which daily cauſe diverſity of Caſes. Therefore muſt our Student take a reſolution not to ſink under his Burthen, but with all convenient Induſtry to proceed in his Study; not to be weary, but to take up *Seneca's* Reſolution, *Nullus mihi per otium dies exit, partem noctium ſtudiis vindico non vaco ſomno, ſed ſuccumbo, et oculos vigilia fatigatos cadentesq. in opere detines.* Nor is it ſufficient for him not to forgo his

his Station, but he must with all curage and Alacrity go on in his Study, taking this for a Rule *Non progredi est regredi*: [If he will not go forwards, he must go backwards] And let him not think that if he gives any cessation to Study, that he shall find it where he left it. for so will he unlearn more in a Week then he can learn in a Month. Neither is that all, but the tediousness he takes in going over that again, which by his neglect he for it is more irksome then the first onset And our Student without a great hindrance of Proficience cannot abridg any of his set Time of Study, nor is he to make a Recreation onely thereof, but to make it his whole business and so much the rather because it is true that the Philosopher saith *Ars longa vita brevis* The Study is long, and the Time but short,) *Non cum vacaveris studendum est, omnia alia negligenda, ut huic assideas cui nullum tempus magnum satis est, etiamsi a pueritia usq; ad ultimos humani aevi termios vita protendatur* Seneca

tendatur. Nor is it any colour to pretend weakneſs of Body and tenderneſs of Complexion; ſaith Maſter *Fulbeck*; theſe are but pretences indeed which ſuch fond pretenders by their conceit and cuſtom at laſt bring themſelves to. Nor is diverſity of Buſineſs and allowable excuſe, though I grant this may be ſome hindrance: for *Obſtat ea ſtudia liberalia turba negotiorum*, Yet muſt our Student wave every thing that may interrupt his Studies, if it can be done with convenience; *Vitare turbam* (with *Seneca*) *& ſecedere non tantum ad hominibus ſed etium a rebus, & primum a ſuis.* And having once freed himſelf from Buſineſs, let him not involve himſelf therein like thoſe of the ſame Author, *Qui ſimulant occupationes & augent*: And in ſuch matters as are not to be neglected but either for conveniency or neceſſity to be performed, let him obſerve the ſame Authors Rule, *Rebus non me trado ſed commodo, nec confector prædendi temporis cauſas.* Our Student therefore is to be dilligent in his Study

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for saith one, *Otium stultitiam laborat scientium generat.*

And now having done with his Qualification, and armed him *Capa pe* against this encounter, if our Student be defective in any of these; then he must make use of the Lord *Bacons* advice, who saith, That the covering of Defects is of no less importance then the valuing of good Parts, which may be done three ways by Caution by Colour, and by Confidence. 1 By Caution, when men doing ingeniously and discreetly, avoid to be put unto these things, for which they are not proper. whereas on the contrary bold and unquiet spirits will thrust themselves into matters without difference. and so publish and Proclaim all their wants. 2. By Colour when men make Way for themselves to have a construction made of their faults, or wants, as proceeding from a better cause, or intended for some other purpose, and therefore whatsoever want a man hath, he must see that he pretend the vertue that shadoweth it,

as

as if he be dull he muſt affect Gravity, and ſo the reſt. For the ſecond, a man muſt frame ſome probable cauſe why he ſhould not do his beſt, and why he ſhould diſſemble his Abilities, and for that purpoſe muſt uſe to diſſemble thoſe Abilities that are moſt notorious in him, to give colour that his true wants are but Induſtries, and Diſſimulations. 3. By Confidence, which is the laſt but ſureſt Remedy, (being that which beggars all other parts) to depreſs, and ſeem to deſpiſe whatever a man cannot attain. This Confidence doth faſcinate and bind Hand and Foot, thoſe that are either ſhallow or weak in judgement which are the greateſt Part; yea, and prevaileth with the wiſeſt at ſome times. Theſe men when they have promiſed great matters, and failed moſt ſhamefully, yet if they have the perfection of Oldneſs, they will but ſlight it over and make a turn and no more ado. *Mahomet* made the People believe that he would call a Hill to him, and from the Top of it offer up his Prayers for

for the obſervers of his Law. The People aſſemble; *Mahomet* called the Hill to come to him again and again, and when the Hill ſtood ſtill, he was never a whit abaſhed, but ſaid, *If the Hill will not come to* Mahomet, Mahomet *will go to the Hill.* To ſlight defects is no litt'e Policy obſerving the principle of the Merchants, who endeavour to raiſe the price of their own Commodities, and beat down the price of others. But there is confidence that paſſeth this other, which is to face out a mans own defect, in ſeeming to conceive that he is beſt in thoſe things wherein he is failing and to help that again, to ſeem on the other ſide that he hath leaſt opinion of himſelf, in thoſe things wherein he is beſt. And to our Student thus qualified for this Study I muſt ſay with *Seneca Legi tetotum dedica, nam dignus es illa, et illa te digna,* as will appear in the following Chapter.

CHAP

CHAP. II.

Of the Nature of the Study.

THe next thing to be conſidered by our Student is, The Nature of the Study, and that is Law, which the Greeks call Νόμος ἀπὸ τῆς νεμήσεως *a diſtribuendo* anſwerable to that of *Juſtinian*, that it is *Jus ſuam cuiq; tribuendi.* The Latines call it *Lex*, *a ligando*, as *St. Germin* in his *Doctor* and *Student* ſaith, for ſaith he the Law is derived from *Ligare* to bind. But *Bracton* and before him *Cicero*, derive it *a Legendo*, from chuſing, becauſe of the choice of Knowledge that is in it: wherefore ſaith he *Eamq; rem tibi Græco nomine a ſuum cuiq; tribuendo appellatem ego noſtro a legendo; nam ut illi æquitatis, ſic nos delectus vim, in lege ponimus. & proprium tamen utramq; legis eſt.* And this Law is two fold, Native and Poſitive. The

Cicero de legibus

Law

Law Native, is either the Law of Nature, or Reason: thus divided, because the Law of Nature generally considered, is referred to all Creatures as well reasonable as unreasonable, for all unreasonable Creatures, live under a certain Rule or Law given to them by nature necessary for them to the Conversation of their being; but as it is referred to the reasonable Creatures, it doth not differ from the Law of Reason, as St. *Germin* in his Dialogue observeth, for saith he, the Law of Nature specially considered, is called also the Law of Reason: and the same Author tells us, that when the Law eternal is known to his Creature reasonable by the Light of Natural Understanding, or by the Light of Natural Reason, that is called the Law of Reason. And herewith agreeth *Cicero's* Definitions hereof; *Lex est ratio summa insita in homines naturam, quæ jubet ea quæ facienda sunt prohibet q; contraria.* Concerning this law, the same *Cicero* saith, *Constituendi vero juris ab illa summa* Cic. de legibus

Doctor & stud. c. 2

lege capiamus exordia, quæ ſecubis omnibus ante nata eſt quam ſcripta lex ulla, & non tum aeniq; incipit lex eſſe, cum ſcripta eſt, ſed tum cum orta eſt, eſt orta autem ſimul cum mente divina And therefore this Law is always good and juſt, and ought to be keept amongſt all men at all times; and therefore cannot be abolithed or changed; according to the Maxime, *Jura naturalia ſunt immutabilia*: and againſt this Law, Preſcription Statute or Cuſtom cannot prevail. And all poſitive Law muſt be conſiſtent with the Law of Reaſon, according to that of *Cicero*, *Omnium legum eſt inanis cenſura niſi legis divinæ imaginem gerat*. And if at any time any poſitive Laws are made that are contrary to the Law of Reaſon, they have not the force of a Law, but are void and againſt Juſtice for this is the Rule or mold for all other Laws whatever. Wherefore ſaith the ſame *Cicro*, *Si populorum juſſi, ſi Principium decretis, ſi ſententis judicum, jura conſtituerentur, jus eſſet latrociuari, jus adulterare, jus teſta-*

menta

menta falſa ſupponere; ſi hæc ſuffragiis aut ſcitis multitudinis probarentur. And *Stultiſſimum et illud, exiſtimare omnia juſta eſſe, quæ ſcita ſunt populorum inſtitutis aut legibus.* (if the Peoples Ordinances, the Princes Decrees, Sentences of Judges; could be made Laws, it would be Lawful to ſteal, to commit Adultry, and to forge the Wills of the Dead, if it ſhould be allowed by the ſaffrage or Voices of the People. And it is a moſt fooliſh thing to imagine all things to be juſt which are commanded in the Ordinances or Laws of the People.) Nor is it the Conceits or Mandates of Men that can make Laws. *Non enim opinione ſed natura conſtitutum eſt Jus.* Yet the Law of Nature not being diſcerned by all it is neceſſary for the good order of the people to have many things added by Magiſtrates to the Law of nature or rather in Affirmance of it, as ſome Statutes are of the Common Law. So that the poſitive Law is but the Law of Nature or Reaſon written in Capital Letters, diſcernable by the

Eyes.

Eyes of all, and as a Comment thereupon. Therefore from the Precept of the Law of Reason (as, that every man deveſt himſelf of the right he hath to all things by Nature: that every man is obliged to ſtand to, and perform thoſe Covenants he maketh that every one do help and accomodate each other as far as may be without danger of his Perſon or loſs of his Means, to maintain and defend himſelf: that ſuch things as cannot be divided be uſed in common, proportionable to the number of them that are to uſe the ſame, or without limitation when the quantity thereof ſufficeth: to love good, and flee evil: to live peaceably: in a word the old Precept, *Quod tibi fieri non vis, alteri ne feceris*, and many ſuch like (are derived the Laws poſitive, as likewiſe from other ſecondary precepts, which follow by conſequence or inference, and are neceſſary Concluſions drawn from the firſt; as in this laſt we ought to do as we would be done by: hence follows, that wrong is not to be done to any man, be-

becauſe he would not be wronged by any man. That Good is to be loved, here is included that a man ſhall love his Benefactor, in that he is a Benefactor, and in deth in him a Reaſon of Goodneſs. And from this Law of Reaſon are framed the Law poſitive and therefore muſt concur with the Law of Reaſon. By theſe Laws poſitive, it appeareth who hath right things, & who not, for whatſoever a man hath by ſuch poſitive Laws, he hath juſtly; and whatſoever he hath againſt ſuch Laws he hath unjuſtly.

Poſitive Laws are ſundry and divers, according to the Conſtitutions of the ſevral places and Countries that they are in force in, And there are in Nature certain Principles and Foundations of Juſtice, whence all poſitive Laws are derived, but as Streams and like as Water to take Tinctures and Tafts from the Soiles thorow which they run, ſo do poſitive Laws vary according to the Regions and Government where they are wanted, though they proceed from the ſame Fountains: and ſuch are the Laws

Polyd Commen. b

Laws of *England*, which consist of three parts; the Common Law, Statute Law, and particular Customes. As Sir *John Fortescue* saith. *In legibus sunt elementa quaedam unde ipsae profluent, ut ex materia et forma, quae sunt consuetudines Statuta, et jus naturali, ex quibus sunt omnia jura regni, ut ex materia et forma sunt quaeque natu alia:* (In the Laws (saith he) these are certain Elements whence they flow as of matter and form, which are Customes, Statutes, and the Law of Nature or the *Common Law*) of which consisteth the Law of this Realm, as all other natural things proceed out of matter and form.

1. The Common Law of *England* consists. 1. Of common Customes of the Realm time out of mind used being neither against the Law of God, nor Reason, but found to be convenient and necessary for the Common-wealth, as, That the eldest Son is only Heir to his Ancestor; and if no Son but Daughters, then all to be Heirs.

That

'That Inheritances ſhall never aſ-
'cend from the Son to the Father, or
'any other Anceſtor in the right
'Line. That if a man purchaſeth
'Lands in Fee, and dye without
'Heirs, the Land ſhall go to the
'Lords by eſcheat. If an Alien
'have a Son that is an Alien, and
'after is made Denizen, and hath
'another Son, and purchaſeth
'Lands, the youngeſt ſhall inherit,
'Baſtards ſhall not inherit. All
'Goods and Chattels of the Teſta-
'tors ſhall go to the Executors all
'the Intereſt of the Wife in her
'Goods is determined by her Mar-
'riage and inceſted in the Huſband
'If the Wife be an Inheretrix, and
'have Iſſue, and dye, and the Iſſue
'dyes, the Huſband ſhall be Tenant
'by the Courteſie. If the Wife be
'the Age of nine years, and the Huſ-
'band is ſeiled of an Inheritance du-
'ring the Coverture, & dies, the wife
'ſhall have the third part during life
'for her Dower. And ſuch like.

II. The common Law conſiſts of Princi-

Principles or Maximes, which have been always taken for Law in this Realm. *Sunt quædam universalia in legibus* Angliæ, *quæ in iisdem doctissimi*liter *et Mathematici Maxima vocant, Rhetorici* Paradoxas, *& Civilistæ Regulas juris denominant* saith *Fortescue* (There are certain Universals in the Law of *England*, which the Learned therein, as likewise the Mathematicians, call *Maximes*, the Rhetoricians Parodoxes, and the Civilians Rules of Law) And these Maximes it is not lawful for any one to deny, being indeed Conclusions of Reason; and therefore every one of them is sufficient Authority to it self, agreeing with that of *Seneca. Juris consultorum valent responsa etiam si ratio non reddatur, nam per se multum habent ponderis*, And saith another, *Omnis disciplina progressus a generalibus præceptis recte deducitur, quæ nisi uti cujusq artis fundamenta ad omnium specierum, atq; individuorum cognitionem ita necessaria sunt, ut neq; ignorari neq; in dubium revocari debeant. Pla*

Fortescue de & leg Ang p. 21

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ne ignorari. Universalia non possunt sine quibus ad particularium notitiam minime pervenitur. Revocari in dubium non debent cum ut ipsa declaricora, vel notius supra se habeant nihil. Sect. his igitur. Just. dejust & jur. And *Fitz.* in his Preface to his *Nat. Brev.* to the same purpose saith. *En chescun art & Science illy ad certain Rules et tiel manner sont divers Rules et Fundaments en la Science del commen Ley des terre as ceaux que veilont apprender la dit Ley especialment alcome mencem nt; car de sues ceux Fundaments as queux doit home done foy et credence, et les quels il ne pois denier Et en queux home doit doner foy et credence, et non pas eux donier queux sunt fort necessaries a tout la ley dependent.* They are of the same effect and force as the Statues are and are always determined by the Judges, and not by a Jury. And whereas the general Customs be known to all throughout the Realm as well to the Unlearned as the Learned, and may easily be known, and by little study, these Maximes are only known in the

the Kings Court or among them that take great ſtudy in the Law of the Realm and among but few other perſons: for inſtance: That diſcent taketh away Entry. A Writ of Action cannot be granted over. The Defendant in an Action of Debt upon a ſingle Contract, may Wage his Law. If a Villain purchaſe Lands, and the Lord enter, he ſhall enjoy them as his own. Things that lie not in a manual Occupation, cannot be granted without Deed. The King can diſſeiſe no Man. No Freehold may be either given to, or derided from the King but by matter of Record. A Leaſe and a Releaſe amount to a Feoffment None ſhall take benefit of his own Wrong. No man can do an Act to himſelf. The Law eſpecteth the order of nature. Whom the cauſe ceaſeth, the effect ceaſeth. Things be diſſolved as they be contracted. Things grounded upon an ill or void beginning, cannot have a good perfection. He that claimeth paramount a thing, shall

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neither take benifit nor hurt thereby. Where the Foundation faileth, all goeth to the ground. A personal action dies with the person. A personal Action once suspended, is gone for ever. The more worthy things draws to it, the less worthy. Things accessary are of the nature of the principal. Possession is favoured where there is equality of Right: Nothing to be void which by possibility may be good, and the like. And it would be worth his while if our Student in his reading should transmit all the maximes he meets with in an orderly way Alphabetically or otherwise, with the Book and Page to a small Manual, which he may always carry about him, ready to take up those *tempora subsciva*, which fall from the hottest business (for business ebbs, and flows when perhaps the distance of that, from his own place can afford him no better conveniency

And this Common Law is the most excellent and most perfect, and

without compariſon the beſt to make and preſerve a Common-wealth: for other Laws are impoſed upon the Subjects before any probation or trial made, whether they are fit and agreeable to the Nature and diſpoſition of the people, or whether they will breed any inconvenience or no; but cuſtom never becomes a Law to bind the people, untill it hath been tried and approved time out of mind, during all which time, there did thereby ariſe no inconvenience; for if it had been at any time found ſo, it had been uſed no longer but had been interrupted, and conſequently had loſt the force of a Law

II. The ſecond part of the Laws of *England* are Statutes, made by the King, Lords Spiritual and Temporal and the Commons aſſembled in Parliament, in ſuch Caſes where theſe Cuſtoms and Maximes were defective, or in affirmance of theſe Cuſtoms and and Maxims, if remiſly obſerved. And this Statute-Law cannot chuſe but be excellent. being ſeveral times debated in ſeveral places, and

and by persons of several conditions, add the Royal Consent likewise given before it hath the force of a Law which if it were not every way convenient, and fit for the intended purpose, some of so great a number must need spie the inconvenience and danger.

The third and last are the particular Customs, used in several Counties Cities Boroughs and Seignories in the Realm, which not being disagreeable to the Law of Reason, though against the said generrl Customs, (for *consuetudo tollit communem legem*) yet stand in force and are taken for Law: and these Customs if denied are tried by a Jury of twelve men, unless such a Custom be of Record in the same Court; as the Custom of Gravel-kind in Kent That all Children shall inherit: and if the Father be attainted of Felony and executed yet shall the Children inherit. according to the saying.

The Father to the Fergh
And the Son to the Plough.

And

And the Custom of *Burrough English* in several Seigniories where the youngest onely Inherits in London, That the Inhabitances (before the State of 32. H. 8. of Wills) might by their Testament inrolled bequeath their Lands to whom: they would save in mortmains: and if Free-men in mortmain That in an action of Debt without specialty, if the Plantiff produce a Bill under the Defendant's hand acknowledging the Debt he shall not wage his Land. Also in some Mannors the eldest Daughter by the custom shall only inherit also in some places the Wife shall have all the Tenements of her Husband for her Dower: in some places the Moyety & several other.

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This of Law above all others Professions, is most honorable, in as much as it is both profitable and pleasant that it is most profitable, one experienced herein affirms, to wit *Fortescue*; who saith, *Non est advocatus in universo mundo qui, rateon officii sui tantum luceratur*: and

pleasant

pleasant it must needs be, consisting both in Action and Contemplation; for the same Author tells us *Vita ipsorum plus contemplativa videtur quam activa si q; quetiam illi vitam agnut abomni sollicitudine et mundi turbinibus semotam*, And it is not onely so, but it is the principal means of attaining Felicity as far as may be in this life: for without Skill and Knowledge in this Profession: Justice cannot be administred and Justice is perfect Virtue, to wit Legal Justice not that which is called Commutative or Distributive, And the ancient Philosophers contending so much about their *Summum bonum* have agreed in this one. For the *peripateticks* placing it in Virtue, the *Stoicks* in Honesty and the *Epicures* in Pleasure, yet the *Stoicks* defining Honesty to be that which is well done and praise worthy through Virtue, & the *Epicures* affirming nothing to be pleasant without Virtue agreed with the *Seripateticks* herein, that it is Virtue alone which obtains Felicity So that Justice being Ver-

tis perfecta, and this not attainable but by the Law it neceſſarily follows that it is the true, if not the only means of attaining felicity as Sir *John Forteſcue* ſaith *Leges humane non aliud ſunt quam regule quibus perfecta juſtitia docetur, Juſtitia vero quam leges revelant, non eſt illa que comutativa vel diſtributiva vicatur, ſeu alia quecis particularis virtu ſed eſt virtus perfecta, que juſtitie legalis nomine deſignatur. Unde cum perfectus uſus virtutum ſit felicitas & juſtitia humana non niſi per legam perfecte nanciſcitur, nedum ſit virtuntum effectus ſed & omnis virtus ſequitur quod juſtitia fruens felix per legam eſt & per eam ipſe ſit beatus* Law is the life of peace, and conſequently of a flouriſhing Common-wealth, it is the Rule and leſſon of Juſtice ſo neceſſary for all perſons, times and places, as no Family, no City no Common-wealth no King, dom can ſtand without the ſupport thereof. *Civitas ſubſiſtere nequit quæ legibus et conſuetudinibus non eſt firmata.* Without this the Prince doth not

not know how to rule, nor the people to obey. Without this the prince looseth his prerogative, and the Subject his Liberty the Rich man is spoiled and the poor man oppressed *Lex* (saith *Cicero*) *est fundamentum libertatis.* Without this we cannot travel safely by day nor sleep securely by night. Without Law, we should be oppressed by force in the Country if she did not defend us, and undone by fraud in the City, if she did not relieve us. Law inclosoth every mans Garden and Field and marketh it his, and makes every man's Cottage his Castle of defence. So as there is not such an universal and continual use, neither of the light of the Sun, nor of Fire and Water, as there is of the light, heat and comfort of Justice: for a man may remain live some hours without the use of these common benefits, but a Common wealth, wherein each private man's weal consisteth, cannot stand or continue one minute of an hour, if Justice, which is her Soul be departed from her:

which if it ſhould happen, ſhe would leave this diſmal ſhriek behind her that *Vox magna & peteſtabilis*, as *Seneca* calls it ἐμὲ θυνεντος γαις μιχθηναιπόει, (When Juſtice dies, let the world be made a bone-fire) for this ſecures Us and Ours againſt all violent attempts whatſoever. And if we do but conſider men in the ſtate of Nature, we may eaſily diſcover the great Benefits that flow from the Law. For men being in an equal ſtate and condition, and of equal power, which was not difficult for them to compaſs, for it is an eaſie matter for the weakeſt to kill the ſtrongeſt; and they are equals who can do equal things one againſt another: From this equality muſt ariſe mutual fear, and therefore could neither expect from others nor promiſe to themſelves the leaſt ſecurity, And from the Equality was liberty given to every man to make uſe of the utmoſt of his natural Faculties to his greateſt Advantage; no other being Judge of this Advantage but himſelf. And men in this ſtate ſtriving

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to continue that Right which for the present necessity Nature had given, or rather they had taken of all to all, to do what he would, and against whom he thought fit, and to possess use and enjoy all that he could obtain: according to the poet *Vivitur exrapto*; and whatsoever he would, that being good because he wills it, and onely he Judge of its goodness, and it being in his power to use all means for the obtaining of his ends Hence must needs arise Jealousies and Suspitions on all hands, which at the last can do no less then break forth into a Civil War, the Law provides against all these inconveniences by subjecting them to her Precepts, from whence ariseth inequality and property *meum & muum*: although as Mr. *Fulbeck* saith, these things were not by the Law of Nature, but by the necessity of the time for which cause afterwards men by the precepts of the Law were civilized and brought to a sotiable Communion. And therefore not without reason hath this Profession gained

ed favour both of God and men. And it is observed as a spiritual blessing of Almighty God that none of this profession die, *Intestatus & improles* (without will and without child) as *Forteſcue* hath it *Unde et hos genus gratia vidimus ſubſiſtutum quid vix eorum aliquis ſine teſtamento exitu decedat quod juſtis magna et quaſi approbriatæ benedictionis*; Dei *et*. Another thing no leſs observable is, that more noble Families of this Nation have had there riſe from this profeſſion then any other whatſoever, as the ſame Author observes Et *Judicum ſobole plures de Proceribus et Magnatibus Regni hucatq; prodierunt quam de aliquo ſtatu hominum Regni qui ſe prudentia & induſtria opulentos aulicos nobiliſq; fecerunt*) There are more Peers and great men of this Kingdom ſprung out of the Judges off-ſprings then any other condition of men that have by there wiſdom and induſtry made themſelves wealthy, famous and rich) And this will eaſily appear to any that ſhall

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compare the names of such Families with the professors of the Law, in the Terms and Year-books. And saith another, 'It is an infallible Arguement, 'that the estates of such as rise by the 'Law, are builded upon the foundation 'of vertue, in that Gods blessing is so 'manifestly upon them, not only in 'raising but in Preserving their hou-'ses & prosperity 'whereof there are 'examples of a few and those not ob-'scure, in every Shire in *England*.

With man it hath deserved (as it hath found favour and reverance; for if the Law be so necessary certainly the service of men learned in the Law is very needfull, without which Justice it selfe cannot possibly stand; *Periret justitia si deessent qui justitiam alle garet.* if no man studied the Reasons of the Law, if no man kept in memory the Rules of the Law, or course of proceedings therein what would become of publick justice in a short time? or how should the benefit of the Law be derived or communicated unto the people? For is in the body natural, the

the reasonable Soul cannot use her powers but by special Organs of the same body, disposed and fitted by Nature for every Function: So in the Body Politick of a Commonwealth, the Law, which is the Soul thereof produceth no effect or operation at all, but by such of her Ministers as by Art and Experience are inabled and qualified for her service, for, *Lexe justuit inanimata* saith one: *Lexist mutus Magistratus* saith *Cicero*: The Law of it self is dumb and speaks nothing, but by the tongue of a learned and Eloquent Lawyer; she is deaf, and heareth no complaint, but by the ear of a grave and patient Judge; she is blind, and seeth nothing, no enormite, but by the eye of a watchful and dilligent Officer. And although the Philosopher tells us, that *Jupiter* did first invent and give the Law, yet was *Mercury* sent with that Heavenly gift to deliver it over unto mankind. So that without the assistance of these *Mercuries* the learned Professors hereof, there can be little or

Protagor in Plato

no

no use of the Law. In a word, it is dead, *Et non (nisi acto) agit.* Therefore have the professors hereof been ranked with the ennobled. And, saith the Civil Law, the professors hereof, being the interpreters of the Law, they are the most necessary Instruments in a Common-wealth, and their Place and Calling is honourable: They ought to be freed of Mulcts publick Charges, impositions, and all other Burdens of the Common-wealth, and to be written or sent unto as unto persons of special worth and dignity, And *Constantine* the Emperour likewise decreed, that yearly pensions should be paid unto them out of his treasure. And *Valentinian* the Emperor would have them that were by the space of twenty years professors of the Law, to be called by the name of *Comites.* Neither hath this Nation been wanting herein. The Law is the life of the Common-wealth; for all its peace plenty, civility and moral honesty depend thereupon. That men enjoy their wives, lives, children-

Vid Fulb. Extat lex Constat lib 10 Cod

dren. lands goods good names and all things elſe they are beholding the Law for it. *Quid ſunt Regna niſi latrocinia, ſine lege* ? Without Law, the Land would be full of Thieves, the Sea full of Pirates, every place full of danger; we ſhould not know what were our owne, nor what were a nother man's what we ſhould have from our Anceſtors, nor what we ſhould leave to our Children *Omnia incerta ſunt cua jure diſceſſum eſt* ; lay aſide the Law and run into unavoidable confuſion there would be nothing certain, nothing ſure, no Coutracts, no Commerce, no Converſation among men, but alſo all Kingdoms and States would be brought to confuſion, and all humane Society would be deſſolved, Therefore well might *Cicero* ſay *Major hæreditas venit unicuiq; noſtrum jure et legibus quam aprencibus.* For the gifts of our Anceſtors without Law to ſettle them in us and keep the poſſeſſion of them inviolate to us, were to no purpoſe. Doth not; this profeſſion

comfort

comfort every day ſuch as are grieved counſel ſuch as are Perplexed, relieve ſuch as are circumvented, prevented the ruine of the improvident ſave the inocent ſupport the impotent, take the pray out of the mouth of the opreſſor ? Is ſhe not *oculus cato & pes claudio* as *Job* ſaith ? Doth ſhe not ſtretch forth *Irachium Seculare* in defence of the Church and true Religon ? So that I eaſily believe that of the Orator *Conſtat potecto ad ſalitem Civium civitatumq; incolumitatem vitamql hominum & quietem et beatem inventas eſſe leges.* Aworthy profeſſior of the Law (as Sir *John Davices* ſaith) is a Star in the fermament of the Common-wealth; he is *lux in tenebris* whereſoever he dwelleth, his houſe is an Oracle, not onely to a Town or City, but to a whole Country round about him: ſo as he may truly ſay of the people that ſeek his counſel. as *Apollo Pythius* ſpoke in *Ennius* of ſuch as reſorted to his Temple.

Cicero.

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Sudrum

Euarum rerum incerti quos ego ope
mea
Ex incertis certos, compoteſque
conſilii
Demitto, ne res timere tractent
turbidas.

Of poſitive Laws, it is very evident to any that ſhall conſider, and weigh them in the ballance, that the Laws of *England* outvy and excel all others; as much as a Star doth a Gloworm. For if they had not been of the beſt ſtamp and frame, ſome of the Conquerers of this Land, namely the *Romans, Saxons Danes*, or *Normans* either moved thereuuto by Juſtice, or Reaſon, or Affection would either have changed or, abrogated the ſame. Whereof *Forteſcue Et in omnibus nationum harum Regum eorum temporibus Regnum illud eiſdem quibus jam regitur conſuetudinibus continuo regulatum eſt. Quæ ſi optimis non extiſſent, aliqui Regum eorum, juſtitia, ratione vel affectione concitati, eas mutaſſent aut omnino*

nino deliviſſ nt. (In the whole time of the Reign of all the Kings of this Nation, this Kingdom was governed by the ſame Cuſtoms that now it is : Which if they had not been the beſt, ſome of thoſe Kings, for ſome ends or reaſons would have either changed or abrogated them.) Excellent they are if only for this, That they do not only ſecure us, againſt our equals, but all other whatſoever, yea even our Soveraigns So that the King cannot in the leaſt wrong his Subjects, nay, cannot do as much as another Subject may. For the King cannot command one in his preſence to be arreſted, which his chief Juſtice and divers others may : For if that were legal, and the Subject wronged, he ſhould be put to ſeek for remedy where none could be had. Nor do the Laws of *England* admit of an abſolute and ſole Regal power and dominion, ſuch as moſt Nations groan under, according to the Civilians Rule, *Quod principi placuit, leges habet vigorem*; but it is otherwiſe with our Laws, which bind

bind him to a political as well as a Regal Government and not without reaſon, for, *Rex datur propter Regnum, & non Regnum propter Regem; huo omni poteſtas Regni referri debet ad bonum Regni.* Whence it follows that the King of *England*, cannot in the leaſt change the Laws without the conſent of the whole Kingdom by their Repreſentatives in Parliament, *Non poteſt Rex angliæ ad libitum ſuum* (ſaith *Fotteſcue*) *leges mutare Regni ſui Principatue nam q; nedum regali ſed & politico, ipſe ſuo populo dominatur.* (The King of *England* cannot at his liſt change the Laws of of his Kingdom for he Rules not only by a Kingly: but alſo a Political government) And as he cannot change or alter Laws without ſuch conſent, ſo neither can he make any, ſo as to bind the work of his ſubjects to any matter of charge or dammage where fore ſaith the ſame Author, *Rex Angliæ per ſe ant miniſtres ſuos neq; Tallagia, Subſidia aut quevis alia Onera imponit ſubditis ſuis ant*

Leges

Leges eorum murat, aut novas condit ſine conſenſu et aſſenſu totius Regni ſui in Parliamento expreſſo Neq ; poteſt Rex Angliæ rentientem populum onerare impoſitionibus peregrinis and again *Angliæ Statuta non Principis voluntate, (ut in Regnis quæ tantum Regaliter gubernantur) ed totius Regni aſſenſa ipſa conduntur.* And the effect of this Political Government is very commodious for a Common-wealth, for the meaneſt of his ſubjects cannot be diſſeized of his Free-hold or queſtioned concerning the ſame, or any other real or perſonal Chattels, but by the Law of the Land, nor any man impriſoned, or tried for his life, or otherwiſe, but by the ſame Law. *Angli non implicitati ſunt de mobilibus aut poſſeſſionibus ſuis, vel arretati de crimini alique qualiter cuaq; magna niſi ſecundum leges terræ illius et hi ſunt fructus quæs part* Regimen politicum et regale. Which is contrarily practiſed in *France*, and other places and Nations, where they are condemned in private, never ſeeing the face of their

their Accuſers, and as privately but ride out of this Life, without the leaſt colour of Law.

Nor are the Laws of *England* only the beſt, but alſo the antienteſt of humane Laws. *Nec illorum mundi regnorum decolarum leges, tanto ævo notæ ſunt.* Wherefoe *Forteſcue* might very well conclude, *Quare non bonas imo non optimas, eſſe Anglorum Leges et conſuetudines, ſicut non dicere, ita nec ſuſpicare fas eſt* And thoſe Cavils of Difficulty, Tediouſneſs, and Uncertainty, which are imputed to the Law, are of ſo little moment, that they ſcarce deliver an anſwer. *Subtilius eſt contemſiſſe quam ſolvere,* For the firſt, I may well ſay with *Seneca*, It is difficult becauſe we dare not, nay, will not tye our ſelves to a little induſtry to ſearch into it. *Nil quia difficilis eſt non audemus, ſed quia non audemus difficilis.* Nor ought it to trouble us, that the Law-books are ſo many and large, that there is ſuch an Ocean of Reports, and ſuch a Perplexed Confuſion (as they ſay) or Opini-

Opinions, inſomuch as the Science is ſhort and eaſie enough to the induſtrious, and if our Books ſhould be compared to the Books of the Civil Law, and other Sciences, they are but as mole hills to mountains. And if it were guilty of Tedioufneſs yet is not this any cauſe of deſiſting, for I would fain know what things of worth are compoſed without pains and travel, yet if the pains be compared and ballanced with the pleaſure and proffit it is (as Mr. *Fulbeck* ſaith) but as a few drops of hail to a whole ſhowre of Manna: but we are aſſured to the contrary, that there is no Tedioufneſs in it, and that by one that had experienced it, to wit *Forteſcue* who ſaith *Quanto plus leges mente petractaveris delectabilius tu frueris.* [The more we ſee into them the more delight we have in them.] And as to the Uncertainty of the Law that is eaſily anſwered, for as the Lord *Cook* ſaith, The Law is not uncertain *in abſtracto* but in *concreto*, and the incertainty hereof is *Hominis vitium, non*

Ep ad l. reta

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Professionis; and ignorance is the cause of this contentious incertainty according to *Cicero, Ignoratio juris litigiosa.* Neither is there any Art or Science that, standeth upon discourse of Reason, that hath her Rules and Maxims so certain and infallable, and of little subject to divers interpretations, as the Common Law of *England*, as the Lord *Cook* observes, That in all his time there was not moved in any Courts of Justice in *England* two Questions touching the right of Decents or Escheats, or any other fundamental point of the Common Law: so certain, sure and without questions are the principles and grounds thereof. Our Student must shake off these Cavils, for they are the objections of sloth and Lizines, and are in us, and not in the Law. *Non enim in Rebus vitium* (saith the Philosopher) *sed in ipse Animo.* And if our Student expect that wisdom to preserve *se et sua*, to keep his memory from silence and oblivion, to be of great account with the greatest

De leg l 1

Ep ad lib 2 relat

greateſt, to attain to that knowledge which is the higheſt of all humane Sciences (for from this as the Moon from the Sun have all other Scences their Splendor) he muſt as the ſame Mr. *Fulbeck* ſaith, take *Phaeto*'s reſolution to aſcend to the Chariots of the Sun, who ere he could accompliſh that, was to paſs by uncouth ways and by the ghaſtly ſhapes of deformed creatures. So muſt our Student paſs by a little world of Caſes, Judgment, Statutes, Arguments, Treatiſes, Comments, Expoſitions, Cuſtoms, of Courts, Pleadings, Moots, Readings, and ſuch like: *Et per ejuſmodi of-* Sen *fenſas ementiendum eſt confrago ſum hoc iter.* This he muſt do that expects any great meaſure of knowledge in this Science, (being as *Plato* calls it *Regia diſciplina.*) And all the pains and induſtry beſtowed hereupon, and all the difficulties of this Study are ſufficiently rewarded by the dignity, credit and ample fortune which belongs unto it. There is no Science by which the

the Common-wealth receives more benefits, for there is no course of life, time, age, nor state of men; which can either flourish or be without the safeguard of the Laws. in a word, *Leges proficient ad bones mores, atque non tantum imperant sed docunt, Vnimum formant et fabricant, vitam disponunt, a iones regent agenda et omittenda demenstrant sident ad gubernaculum; et per anceipitia fluctantium dirigunt cursum, sine his nemo securus est.* Therefore I may safely conclude that the profession of Law is to be preferred before all other humane professions and Sciences; as being most noble for the matter or Subiect thereof most necessary for the common & continual use thereof and most meritorious for the good effects it doth produce in the Common-wealth.

CHAP

CHAP. III.

Of the Means of this Study.

THe Means of this Study are books, the choice whereof is a matter of no ſmall advantage. Theſe are the *Viatica neceſſaria*, that make the journey both pleaſant and ſhort. And certainly this choice is no matter of indifferency. Therefore ſaith the Wiſeman, 'If the Iron be not ſharp it requireth more ſtrength;' intimating that the Election of the Means is more effectual then any inforcement or accumulation of indeavours whatſoever. In this Journey therefore or Study of the Law, our Student touching Books, is to obſerve two things, *viz.* Their number and nature. For the firſt he is to ſhun an immoderate deſire of crowding his Study with Books, a practice ſomewhat antient, for ſaith *Seneca*,

Quem ad modum omnium rerum, ſic librorum quoq; intemperantia laboramus. For ſuperfluity of Books doth not only diſtract the thoughts, but doth likewiſe burden and weary the ſpirit: *Diſtrahit animum librorum multitudo, & onerat diſcentem turba, non inſtruit, multo q; ſatius eſt paucis te tradere auctioribus quam per multos errare.* Nor in my opinion is that very commendable which *Bole* ſaith of St. *Germine*, *Tota ejus ſubſtantia eum moreretur in libris fuit*, (That all his wealth conſiſted in Books) And certainly this is a great inducement of unſettledneſs and fickleneſs in the courſe of Study; this is a ſign of an Idle and Lazy ſpirit, and certainly ſuch are perſwaded that it is the number of Books that makes a learned man, for with them moſt commonly are none found wanting. *Apud deſidioſiſſimus ergo videbis* (ſaith *Seneca*) *quicquid orationum hiſtoriarum q; eſt & tecto tenus extracta loculamenta.* Some ſpend more time in gathering of Books then in peruſing them, yea till they have

Bolei Scriptorum illuſtrium Britt pag 60.

have ſo many, that they have ſcarce time to read over their Title-pages *Innumerabilis libri* ! (ſaith the ſame Author) *quorum dominus vix tota vita ſua indices perlegit.* Therefore doth he worthily find fault with *Livie* who ſaid, That the forty thouſand books burnt at *Alexandria*, was the faireſt Monument of Princely wealth: *Elegantiæ regum curæ q; egregium id opus ait fuiſſe*; which was indeed a ſtudious Luxury, as our Author affirms: *Non fuit elegantia iſtud, aut cura, ſed ſtudioſo luxuria, imo ne ſtudioſa quidem, quoniam non in ſtudium ſed in ſpectaculum comparaverant.* Yet are they the rather to be excuſed, which do this out of an immoderate deſire of Study; *Ignoſcerem plane* (ſaith *Seneca*) *ſi e ſtudiorum nimia capidine oriretur*, then ſuch who keep them to no other end then ſight and ornament; ſuch as he complains of, who peſtred their very Banqueting houſes and Dining rooms therewith. *Libri, non ſtudiorum inſtrumenta, ſed cœnationum ornamenta. Jam inter balnearia et*

thermas Bibliotheca *quoque ut neceſſarium domus ornamentum expolitur* Though I confeſs there is no better ornament for a Study then books, yet are they not to be ſought after only for ornament whereof the Philoſopher complains, *Nunc exquiſita & cum imaginibus ſuis deſcripta ſacrorum opera ingeniorum, in ſpeciem & cultum paritum comparantur.* But this is in ſome meaſure avoided by the obſervation of the ſecond, which is their matter: that he be furniſhed with good and approved Authors, following *Seneca*'s Rule, *Probatos utique ſemper lege.* [To read always thoſe that are approved] And ſuch as make no choice in their Reading, but fall on the firſt that comes to hand, diſorder their Studies, and corrupt their Memories and above all, loſe time that gives perfection to Study, therefore ſaith he, *Quid habes cur mireris ignoſcas nomen marmore atque ebore capienti quam opera conquirenti aut ignotorum aut improbatorum Auctorum, & inter tot millia librorum oſcitanti, cui volu-*

minum

minum ſuorum frontes maxime placent titulique. Our Student therefore muſt be moderate herein, and be cumbred with no more then needs muſt. *Paretur itaque quantum ſatis ſit nihil in apparatum.* Books ought to be only for uſe, none for ornament Neither ought he to content himſelf with their number, but matter. *Non refert quam multas, ſed quam bonas habeat*, was *Senaca's* rule And in his choice let no ſpecious Title delude him, but rather make him more carefull, to ſee that the matter of the Book be anſwerable to the Title; for *Quorundum ſcriptas clarum habent tantum nomen cætera exanguia ſunt.* their Title pages too often containing more then the reſt of the whole book.

Books written of the Law, may be reduced to theſe four heads. Hiſtorical, as the Years and Terms of the common Law. Or Explanatory, as the Lord *Cooks* Commentary upon *Littleton.* Miſcellaneal, as the Abridgments Or Monological, being of one certain ſubject, as

Mr *Stamford's* pleas of the Crown Mr. *Lombards* Justice of the Peace And these Books are written in three Languages, *viz* English, French, Latin as Sir *John Fortescue* sath, *Legis Angliæ tripplici lingua, addiscuntur, videlicet; Anglicana Gallica, et Latina*. And although the Pleadings in the French tongue was taken away by the Statute of 36. *E. c.* 15. as the same Author hath it *Olim placitare in lingua Gallica soliti fuerunt, qcusq; mos illa vigore cuiusdam statuti restrictus est*; yet the Language is so appropriated to the Law, that it cannot be abolished, because most of the terms or words of this Art of Law are in the French Tongue, which without great prejudice cannot be altered *Gallica hucusq; aboleri non potuit propter terminos quosdam quos plus proprie placitantes in Gallica lingua quam in Anglice experimunt*. but waving our former division you shall have an account of them as they offer themselves unto us-

De laud Ang q 100 a

The

The first whereof is the Regiſter which containeth the Writs of the Common Law and is the antienteſt Book of the Law being written long before the Conqueſt, as appears by the Book-caſe of 2 E. 3. *pl.* 24. It is called *Regiſtrum Cancellariæ*, in the Statute of *Weſtminſter*, 2 *c.* 24. and this Book (as the Lord *Cook* ſaith) is the Antienteſt, and of greateſt authority *Vid Bracton. l.* 5 *tract de except. c.* 7. *fol.* 413. Dom Cocus Ep. ad lib relat.

The Mirror of Juſtices, *Speculum Juſticiariorum*, moſt of it was written long before the Conqueſt, as by the ſame appeareth; and many things added thereunto by *Andrew Horn*, a learned and diſcreet man (as is ſuppoſed) in the Reign of E. 1. or E. 2. (as Mr. *Selden* ſaith) who wrote theſe enſuing verſes before the ſame, tranſcribed by Mr. *Selden* out of a Coppy of this Book, extant in *Benet*-Colledge-Library in *Cambridge*. notes on *Forteſcue* fol. 3.

Hanc legum ſummam, ſiquis vult mira tueri,
Per legat, & ſapiens ſi vult Orator haberi;
Hoc apprenticiis ad barros ebore minus,
Gratum Juridicis utilo mittit opus

Clanvil de legibus & Conſuetudinibus Regni Angliæ, Written in the Reign of H. 2. as appears by his book. A Hiſtory, ſaith the Lord *Cook*, worth the reading, eſpecially for proſecution of real Actions. About this time was the Treatiſe called *The Old Tenures*, compoſed a Piece of good uſe.

Bracton, Written by *Henry de Bracton*, a Reverend Judge in the time of H. 3. is a book that contains the whole Body of the Law, artificially and methodically written and of great uſe for the information of the Reaſons of the Common Law.

Britton, compoſed (as ſome ſay by *John Britton* Biſhop of *Hereford* by

by the command of E. 1. the Tenour, whereof runneth in the Kings name, answerable to *Justinians* Institutes But this *Britton* that composed this Treatise, Mr. *Selden* in his Notes upon *Forteſcue*, denies to be the Bishop of *Hereford*, but a Judge of that name about that time, which is more probable Whoever it was tis certain he was of a great and profound Judgment in the Common Laws and his book is accordingly learnedly and methodically written, Though some Points of his Law are now absolute and out of date which made *Montague*, chief Justice say, That his book contains many errors. Page 15 Lloyd. Com. 58 2

Fleta is likewise a work well written by some learned Lawyer saith the Lord *Cook* who being committed to the *Fleet* had leisure to compile it there; and therefore is called *Fleta*, by the name of the *Fleet* concealing his own name The Author thereof is unknown, but it appears by his book, that he lived in the Reign of E. 2. and E. 3. *Vid. l.* 1.

c. 20. *sect. Qui ceperunt. l.* 2. *c.* 66 *sect Item nullus.*

But these Books (saith Mr. *Fulbeck*) as it is not unprofitable to read, so to rely upon them is dangerous, for most of that which they give forth for Law, is now antiquated and abolished, their Books are *Monumenta adoranda rubiginis*, of more Reverence then Authority Their works are rather matter of curosity, then of progression and proficience, and tend rather to augment the mass of Learning in learned men, then to rectifie and raise it: which made Justice *Periam* in *Zouch* and *Bamfield's* cause, *Lennord's* Reports call them *Actores non Authores Legus*

Forteſcue de laud legni Anglia, written in the Reign of H 6. in the commendation of the Laws of *England*, containing withall much excellent matter worthy the reading. He sheweth herein a sharp judgment and herein he is exquisite and artificial that where he endeavoureth to be plain, he spareth no

to be profound To the last Edition of this Book is added Mr *Selden*'s Notes upon him, containing both antient and curious learning.

Statham's Abridgmnt published in the Reign H. 6. by *Statham* a learned Lawyer of that time A Book (saith the Lord *Cook*) well contrived and of great use.

Littleton's Teneres is a Book of sound and exquisite Learning comprehending much of the marrow of the common Law. Of this Book, saith the Lord *Cook Hottman*, a Civilian and Canonist in his Commentary, *De verbis feudalibus verbo feudum*, giveth his censure, with what charity or discretion, judge, learned Reader. *Sed hactenus Passaverimus* (saith he) *excellenti viro ingenio, &c. libellum mihi Anglicanum Littleonum decit, quo feudorum Anglicanorum iura exponuntur; sed incoriate, absurde & inconcinne scriptum, ut facile apparet, verum esse quod Polydorus Virgilius in Anglicana historia scribit, Stultitiam in*

eo

eo libra cum malitia et calumniandi studio certare. Of *Hottomon* and his Authour, I may justly say and will say no more *Volentes esse legis doctores, non intelligentus, neq; que loquuntur, neque de quibus affirmant* And therefore let us leave them amongst the number of those *Qui vituperant quæ ignorant.* For the Civilians, There pages are so full of palpable errors and gross mistakings as those new Authors are out of our charity pitied, and their books out of our Judgment cast away unanswered Alas our book of Law seem to them to be dark and obscure, but no wise man will impute it to the Laws but to their Ignorance who by their sole and superficial reading, cannot understand the depth of them And for *Littleton*'s Tenur's, I affirm it against all Opposites whatsoever that it is a work of as absolute perfection in his kind and as free from errors, as any book that I have known to be written of any humane learning Of him a man of great Excellence in his Profession,

Mr.

Mr. *Camden*, hath justly said, that he was a famous Lawyer; to whose *Treatise of Tenures* saith he, the Students of the Common Laws are no less beholding then the *Civilians* to *Justinians Institutes*. Therefore it is deservedly said that *Littleton* is not onely the name of a Lawyer but of the name it self I have cited him thus largely, that the worth of this Book may the better appear *Montague*, chief Justice saith of this Book *Quæ est le verey et pluis sure Register del fundaments et principles de nostr' ley*. Vid the Epistle to the Lord *Cooks* Commentary upon him. Ployd' Comment b.

Fitz. Herberts Abridgment, is a book painfully and elaborately collected and he hath well contrived that which was confusedly mingled together in so many Year books. His *Natur. Brevium* is likewise an exact Book exquisitely penned very useful and profitable for directions and knowledge of our Student in the nature and gift of Writs which is a matter of great importance, for it

it is the foundation of all the procedings in Law and *debile fundamentum, fallit opus.* He hate likewise a Treatise of Justices of the Peace but found fault withal by the Judges, when published saith the Lord Cook for that he therein affirmed, That Justices of the Peace aving by their Commission authority to hear and determene Felonies &c. could not hear and detirmine murder, which amongst others they clearly over ruled that Justices of the Peace might lawfully do.

Docter and Student written by St. *Germine* a learned and discreet man, and well read both in the Common, Civil and Canon Laws as the Lord Cook affirms, of him *Bale* saith *Christopherus Segni armaine alias de sanicto Germano illustri prosapid oriundus socius olim intenerii templi in St burbis Londinensibus, eo erudicionis illic pervenit ut ab ejus urbis civibus immortalem sit assecutus famam. Homo erat omnium consensu in pratiis legibus et in jure tam Canonico quam Civili, excellenter instructur, omniq;*

niq; Philoſophiæ, atq. ſcientiis aliis liberalibus doctiſſimus evaſit. Quam facundum, amplum ac magnificum habuerit ingenium et quam gravem in rebus agendis prudentiam, tota nis mirum Anglia novit. [Chriſtopher St. *Germine* (ſaith he) riſen o an illuſtrious Stock formerly of the Society of the *Inner Temple* in the Suburbs of *London*, arived at the height of Learning, that from the Inhabitants of that City he got immorttal praiſe He was a man by the con en of all excellently learned, both in the Law of his own Country, as alſo the Canon and Civil Laws: very learned likewiſe in Philoſophy & the other Liberal Sciences. What a copious and large wit he had and what gravity and prudence in his actions, all *England* knew.] It is a Book very profitable for the knowledg of the Nature, Ground and Diverſity of Laws, eſpecially the Grounds and Reaſons of the Laws of *England*.

Mr *Stamford*'s Book containeth two parts, One, of the Pleas of the Crown

102 Crown; the Other, of the Kings Prerogative in him (ſaith Mr. *Fulbeck*) there is force and weight and no common kind of Stile, in matter very few have gone beyond him in method none have overtaken him: in the order of his Writing he is ſmooth yet ſharp, pleaſant and yet grave And ſurely his method may be a Law to the Writers of the Law that ſucceed him.

Raſtal's Book of Entries, is a book tending very much to the eaſe and furtherance of the Profeſſors of the Law.

The Lord *Brooks* Abridgement was gathered firſt for his private uſe and publiſhed long after his Deceaſe: A worthy and painfull Work and as the Lord *Cook* ſaith an excellent Repertory of the Year books of the Law. And herein he is more compendious then *Fitz Herbert*, who in a breif manner gives the Reaſons on either ſide, but *Brook* delivers only, the Point adjudged, and where it is doubtful: and no Judgement given, his own opinion. And Mr. *Fulbeck*

ſaith h

ſaith, That where *Fitz-Herbert* is underſtood he profiteth more, and his Abridgment hath more Sinews, though the other hath more Veins.

In Mr. *Perkins* are many commendable things, delivered by a ready Conceit, and a pleaſant Method. Many excellent Caſes which ſavour of great Reading, and good Experience.

Mr. *Theobal*'s Digeſt of Writs, is a very ſound and painful Book: For ſaith Mr. *Fulbeck*, in handling one Title of the Law, he hath dealt ſo painfully that no point can be named concerning that Title which he hath not diſcuſſed; nay, to give him right hath not fully diſcuſſed.

Mr. *Plowden*'s Commentaries conſiſts of two Parts, both of them learnedly and curiouſly publiſhed Works (as they well deſerve) with all the Profeſſors of the Law, of high accompt. The Author whereof (ſaith the Lord *Cook*) was an Antient Apprentice of the Law of great Gravity Knowledge, and integrity. It is a Work full of Argument, and plainneſs of Proof. The

The Lord *Dyer's* Reports, containing the fruitful and ſummary Collections of the Reverend Judge, Sir *James Dyer* Knight, Chief Juſtice of the Court of Common-pleas, for his private uſe and remembrance, were as he left them imprinted after his deceaſe: a work full of pleaſure, diverſity and deep learning.

Maſter *Lambard's* Pains, Learning and Law appear by his Books, (ſaith the ſame Mr. *Fulbeck*) and are conducted by ſo curious a method and beautified with ſuch flowers of Learning that he may well be ſorted amongſt them to whom the Law is moſt beholden. His Stille runneth like a temperate Stream; his excellent knowledge and uſe of Antiquities as his Saxon Laws, argue no ſmall Reading, and a ſingular Conceit. Of his *Juſtice of the Peace*, the Lord *Cook* ſaith *Maſter* Lambard's *Collection of the Office of the Juſtices of the Peace, methodically written, was publiſhed towards the end of the Reign of Queen* Elizabeth. In this Book, though briefly, yet he fully handleth the ſubject-mater, Mr.

Mr. *Cromptons* Books (ſaith Mr. *Fulbeck*) are the products of Induſtry, eſpecially the *Juriſdiction of Court*: they are ſo compendiouſly collected, that a man by a few hours peruſal of them may gain great knowledge.

The Lord *Cooks* works, that is to ſay, his *Inſtitutes*, containing his *Commentary upon Littleton*, his *Expoſition of Magna Charta*, and other antient Statutes, his *Pleas of the Crown*, and *Juriſdiction of Courts* his *Books of Entry* and *Reports* ſhew no leſs induſtry then a ſingular good method, and profound Judgment Books that very well deſerve the name of Pillars of the Law. And as once it was ſaid of *Virgil*, that if all the Sciences had been loſt, yet might they have been found in his Books, ſo certainly it may be ſaid (and more truly) of his works, That if the Theory of the Law had been loſt, it might eaſily have been found therein. His *Reports* contain ſuch diverſity of matter, and that ſo profound and fundamental, that whoſoever is verſed

verſed in them can do no leſs then make a ſound Lawyer. A man he was of ſuch a moderate ſpirit, (well becoming his Motto. *Pruains qui-Patiens*) that he weighed the balance ſo juſtly between the Soveraigns Prerogative and the Subjects Privi-ledge, tha each party challenge him for their own. To ſay more of him were to ſay too little, and put an Affront upon the World, to ſuppoſe they neither knew him nor his Works.

Crook's Reports, and that worthily ought to be named in the next place, whereof there are two Volumes extant and a third promiſed. Reports of as good matter, and artificial brevity, as any extant, yet ſo full, that ſcarce any thing worthy of note is omitted; eſpecially the ſecond part, containing more matter of Law, then thoſe that are of thrice the Bulk; and are the rather to be eſteemed much of, becauſe they are the products of Critical Times. The Certificate of the Judges in that behalf, is ſufficient to manifeſt of what worth thoſe Books are.

The

The Reports of the Lord *Popham* and *Hobart* both Chief Juſtices in their reſpective Places, contain matter profound, yet with convenient brevity Works of great Authority and Uſe. Of Sir *Henry Hobart* Juſtice *Cook* hath this *Encomium*, That 'he was a moſt learned prudent, 'grave and religious Judge.

The like may be ſaid of the Reports of *Owen*, *Hutton* and *Winch*, Juſtices formerly of the Common Pleas, being very fine wie, containing almoſt as much matter as words, very conciſe and pithy, pleaſant and profitable for reading, no ways either difficult to the apprehenſion, or burthenſome to the Memory.

Sir *Thomas Hetley's* Reports are likewiſe profitable for Reading, he being one ſet a part for that purpoſe.

Mr. Brownlow's Reports are very pithy, containing both good and various matter, and therefore are ſafely concluded uſeful.

Mr. Leonard's Reports publiſhed by *Mr. Hughs*, contain, as himſelf ſaith, many excellent matters and

points

Points of Law, and have been approved by the perusal of learned persons in their course of practice.

Mr. *Bulstrod*'s *Reports*, whereof there are three parts, shew no little pains, wherein he hath followed Mr. *Plowden*'s manner of Reporting by fulness of Argument, and plain kind of Proof, learnedly Composed; the perusal whereof will very much improve our Students knowledge.

The Reports of Sir *James Lea*, Sir *John Bridgman*, Mr. *Lane*, Mr. *March*, and Mr. *Styles*, all lately published are likewise to be numbred among those, wherewith our Student ought to be furnished.

And above all he is to be well studied in those *Repositoria Juris*, the Year-books, and Terms or Annalls of the Law; Books as Mr. *Plowden* saith, collected by four able men, appointed for that purpose, who yearly received stipends from the King for their reward, and conferred altogether at the making and setting forth of their Reports. These Reports begin

legin with the Reign of E. 3. (though there are found broken Cases of elder times scattered in the Abridgments since the time of *H.* 3.) and they are these, The Yearbooks of *E.* 3. of *H.* 4. of *H* 5. *H.* 6. E. 4. E. 5. R. 3. H. 7. H 8. And these are of greatest use and authority; for *out of these old Fields* (saith the Lord *Cook*) *springs the new Corn.* The Judges of those times were very learned men in all sorts of Sciences, as easily appears by the Books containing deep points of knowledge.

And as for the Abridgments, though they are of great use, yet as the same Lord *Cook* saith, *Compendia sunt dispendia*, Abridgments in some Cases mistaking the state and truth of the Question, and sometimes the right reason and rule of the case utterly mistaken. Therefore *Satius est petere fontes quam sectari rivulos*; it is better and safe sailing in the main Sea then in rocky Havens. When the whole case is set down at large, with all the circumstances

cumſtances and Reaſons of either ſide, the Point in queſtion is eaſily apprehended, and many Rules of Law collected by inference, which out of an abridged Caſe cannot be done and conſequently the pleaſanter for Reading according to that of the Poet.

Dulcius ex ipſo fonte bibuntur aquæ.

The *Book of Aſſize* is a Book of great Authority in Law and is ſo called becauſe it containeth principally Proceedings upon Writs of *Novel diſſezin*, *Litt.* 198.

Juſtice *Yelverton's Reports* lately publiſhed in the Lawyers own Dialect (I mean the French) contains matter worthy ſuch a grave Judge, and learned Publiſhers.

The *Statutes at large* are likewiſe very neceſſary for our Student, that when he meets any Caſe upon the Statutes, he may turn to that Statute, and peruſe the ſame, and ſo the better underſtand the Caſe, and Reaſons thereof. And

And what other Reports there are extant, though perhaps they are not of great Authority, yet certanly will they give great information in matters of Law, to those that peruse them. Nevertheless the Reader ought to be wary and weigh what he reads before he subject his Opinion, lest they obtrude upon him any Opinion contrary to Law. For saith the Lord *Cook*, 'I like not those that stuff their 'minds with wandring and masterless 'Reports, for they shall find them 'too soon to lead them to errour.

And here our Student hath a Catalogue of all or most of the Books rtquisite for the Study, which are about fifty in number, not very many nor great, most of them being but of small bulk or Volumes; therefore not so great, labour to read over, as may not be compassed in a considerable time. And herein are we happy, that we are not troubled with the many and vast Volumes written of the Civil Law; whose Professors confess that their Law is a Sea full of Waves; the Text whereof being

digeſted into ſo many Volumes, and ſo many Doctors interpreting the Text and twice as many more Commenting upon their Interpretations, and ſo Gloſs upon Gloſs, and Book upon Book, and every Doctors Opinion being good Authority, fit to be vouched among them, muſt needs breed diſtraction of Opinions, and uncertainty in that Law. The like may be ſaid of the Canon Law, albeit the Text thereof be ſcarce four hundred years old. And ſaith one 'If *Littleton* had been an authour in 'the civil or Canon-Law, I dare ſay 'there had been by this time ſomany 'Comments and Gloſſes made upon 'him as the Books written upon this 'Book only, would have been more 'in number, than all the Volumes of 'our Law at this day.

And our Student ought to be furniſhed with the whole courſe of the Law: all theſe Books, ſaith the Lord *Cook*, are not only for his ſet reading, but that alſo, when Caſes are argued, and theſe Books cited, he may turn to the ſeveral places, and

ſee

ſee how they make for, or againſt the Point in queſtion. And probably ſuch Caſes, which in the Books he cannot well underſtand, the very Point in queſtion, for which purpoſe they are cited, may ſerve him inſtead of a Gloſs thereupon. But *Caveat ſtudioſus*, that he do not ſo apply himſelf to theſe, ſo as to neglect his ſet and conſtant courſe of reading.

CHAP. IV.

The Method of Study.

THe Law is a Labyrinth, and certainly, if there be any, Method is that *Ariadne*'s Clew that muſt lead us out of it. By Method I mean that Syntax and Diſpoſition of Studies, whereby we know in what order to purſue the ſame. Without this, be our Parts never ſo excellent, and Endeavours never ſo inforced, yet are they of little worth: for we cannot attain any great meaſure or clearneſs of knowledge. This Art of Method will ſupply mans defects; and *Claudus in via antevertit curſorem extra viam*: A man, though lame, in the rightway, will eaſily out-run the nimbleſt, if he miſtake his Race. He that goes to work methodically, ſhall ſooner compaſs the Circle of this Study, than he that uſes no Method

can

can croſs the Diameter. Therefore *Galen* well underſtanding of how great Importance it was to ſtudy Matters with Order and Method, writ a Book, to teach the Manner that was to be held in Reading his Works, to the end his Readers might not be tangled in confuſion. And as the Lord *Cook* ſaith, 'The uncer-'tainty of the Law, & the inſufficien-'cy of the Profeſſors doth ariſe out 'of that *Præpoſtera lectio*, the confu-'ſed reading that moſt uſe in their 'Studies. In order therefore to our tudents greater Proficiency herein, in reading he muſt obſerve the Lord *Bacons* Rule, to begin with the eaſieſt & ſo to proceed to the more difficult; to begin with the Terms of Art, and then to the Matter. For the Terms, *Cowel's Interpreter*, and *Raſtal's Terms of the Law*; and for both, them, that upon *Littleton*, and he himſelf tells us, they are *Cunabula legis*, (the Cradles of the Law) to be uſed in the beginning of this Study, and is the firſt Book our Student

ought to take in hand. Concerning which Book, he tells us his hope is that the young Student, who heretofore meeting at the first, and wrestling with as difficult Terms and Matter, as in many years after, was at the first discouraged, (as many have been) may by reading those *Institutes* have the difficulties and darkness both of the Matter, and Terms or words of Art in the beginning of his Study facilitated and explained unto him, to the end he may proceed in his Study chearfully and with delight. In the reading whereof his Rules are these; That before he read any of the Commentary upon any Section, that first he read again and again the Authour himself in that Section, and do his best indeavour, first of himself, and then by conference with others, (which is the life of Study) to understand it; and then to read the Commentary thereupon; and no more at any time, then he is able with delight to bear away. And albeit the Reader shall not at any one day

day (do what he can) reach to the meaning of the Author or Commentary, yet let him no way dicourage himself, but proceed; for on some other day, in some other place, that doubt will be cleared. And when our Student, by the reading of these and the like Explanatory Books, is enabled and armed to set upon the Year-books or Reports, he must begin with the latest, as being the fittest to season our Students memory withall. Wherein the Controverted Points in the old Books, being left for Quæries, are resolved, and Cases more suiting with the complexion of the Commonwealth are upon solemn Arguments adjudged; and this is of great importance: for if he should begin with the old Books, wherein many Points of Law are absolute, and altered by late Statutes, and repugnant to daily experience, and many Circumstances tin maiter of practice abolished, our Student would be drawn away by their Authority, to the Lanes and by-paths of Errour, of which

he ſhould not ſuddenly rid himſelf.

Quo ſemel eſt imbuta recens ſervabit odorem,
Teſta diu----

And that is obſervable which Naturialſts ſay, That the Memory is *Tabula raſa*, a plain Table, and as blank paper wherein nothing is written; and that it is moſt retentive of thoſe Figures that are firſt impreſſed thereon: Therefore it behoves our Student to ſee that thoſe firſt Rudiments and Opinions he obtrudes by the authority of the Reporters upon his Judgement and Memory, be ſound and wholſome Principles, thoſe being indeed the foundation of his Study. And, ſaith the Lord *Cook*, 'For the moſt parts, the latter Judg-'ments, and Reſolutions are the ſureſt 'and therefore fitteſt to ſeaſon him 'withal in the beginning, both for 'ſetling of his Judgements, and re-'taining them in Memory.

When our Student hath paſſed over the late Reports, the ſame Lord *Cook*

Cook injoyns him the reading of the antient Year-books and Terms: 'To 'the Reader, ſaith he, mine advice is, 'that in reading of theſe new Re- 'ports, he neglect not in any caſe 'the Reading of the old Books of 'Years, reported in former Ages: 'for aſſuredly (as is ſaid already) 'out of the old Feilds muſt ſpring 'and grow the new Corn. And that of *Macrobius* is very true; *Multa ignoramus que non lateren*t, *ſi veterum lectio nobis eſſet familiari*: (That if we were accuſtomed to the reading of the antient Book, we ſhould not be ignorant of ſo many things,) eſpecially conſidering that hence is learned the Reaſon of the Law. And the reading of the Reports, of all other Books, is moſt beneficial; for they ſet open the Windows of the Law, to let in that gladſome light, whereby the right reaſon of the Rules (the beauty of the Law) may be clearly diſcerned; they broke the thick and hard ſhell, whereby with pleaſure and eaſe the ſweetneſs of

the kernel of the ſeveral Caſes may be ſenſibly taſted; and adorned with variety of fruits both pleaſant and profitable, the ſtore-houſes of thoſe, by whom they were never planted nor watered.

And when our Student is well ſetled in Judgement in the Fundamental Points of the Law, it will be very neceſſary for him, not only for further Information, but alſo for Ornament, after the reading of theſe, to read over all the Antient Authours that have written of our Law; eſpecially if he aim to attain to the Knowledge of a compleat Lawyer.

For the well-ordering of his Study he is to beware that he take not (eſpecially at the firſt) too high a ſtrain; for in a different Nature it diſcourages, in a confident it breeds an opinion of Facility, and ſo a ſloth and neglect; and in all Natures, a further expectation then can hold out, and ſo an inſatisfaction in the end. *Soft and fair, goes far,* ſaith the Proverb; and thoſe that are ſlow and deliberate in their Reading, are commonly

monly ſure in their Judgements. And thoſe that are uſed to ride Poſt in their Studies, *omnia curſim et properantes tranſmittere*, (as *Seneca* ſaith) cannot attain any depth of Knowledge; for that of Learning is an involved intricate way: and certainly he had need be more deliberate then active, who in ſo ill Ground will make good haſt and good ſpeed together. *In labyrintho properantes ipſa velocitas implicat.* He is not the likeſt Man to run out of a Maze, that runs faſteſt. And an over nimble deſire, is like the Stomach of a ſick man newly recovered, more greedy then ſtrong, and fuller of Appetite then Digeſtion; whence ariſe immature and unconcocted Counſels, blind and unſettled Reſolutions. Nor on the other ſide too weak a ſtrain; for then he muſt not look to perform or overcome ſuch a great Task, but he muſt keep in a Mediocrity between both. He muſt read not to contradict and confure, nor to believe and take for granted, but to weigh and conſider; for ſlow-

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neſs of Belief, and Diſtruſt, are the Sinews of Knowledge: Impatience of Doubt, and haſt in Aſſertion and Reſolution, without due and mature Suſpenſion of Judgement, are of dangerous conſequence; for he that begins with Certainties, ſhall end in Doubts; but if he be content to begin with Doubts, he ſhall end in certainty. But herein he muſt avoid extreams, that on the one ſide he fall not into the vein of *Villejus* the Epicurean, of whom it is ſaid, *Nil tam metuen quam ne dubitare aliqua dere videretur*: (He feared nothing more then that he ſhould ſeem to make a doubt of any thing.) Nor on the other ſide into *Socrates* his *Ironical* doubting of all things, but to propound and receive things ſincerely, with more or leſs Aſſeveration and Credit, as they ſtand in his own Judgement proved more or leſs to balance Reaſon on both ſides, and to turn back the firſt Offers and Conceits of the mind, and to accept of nothing but examined & tried. In other Sciences there is not ſo much heed to

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be given as in this; for if in them he errs in Opinion, and winds his Thread upon a wrong Bottom, he commits no Crime only againſt Truth; but in this it doth not reſt within him; but if he be erroneous in his Opinions, he may be very injurious to the Common-wealth, both to the Lives and Eſtates of the People. Neither do I hereby intend that he ought not to labour to a certainty in all Points, even in thoſe that paſs for Doubts: according to *Littleton*,

Queras d dubiis legem bene diſcere ſevis,
Quærere dat ſapere, que ſunt legi-
tima vere.

And the Lord *Bacon* reckons it a great fault peculiar to Lawyers and Scholars, that when a Doubt is once received, they labour rather how to keep it a Doubt then ſtill how to ſolve it, and accordingly bend their Wits: ‘ Of this ſaith he, we ſee fa-‘miliar Examples in Lawyers, and

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Scholars, both which if they have once admitted a Doubt, it goeth ever after authorized for a Doubt. And if in Points of difficulty Reason be so equally divided, that it is beyond his Decision, let him (as it is said already) suspend his Judgment till some other time and place make it clear unto him. Nor must he think at the first encounter to resolve all Doubts, and reconcile all seeming Contrarieties: for he must observe that the Knowledge of the Law is a very deep Well, out of which each man draweth according to the strength of his Understanding; he that reacheth deepest, (maketh the greatest progress therein) seeth the amiable and admirable Secrets of the Law, wherein the Sages of the Law in former times had the deepest reach. And as the Bucket in the depth is easily drawn to the uppermost part of the Water, for *Nullum elementum in suo proprio loco est grave!* but take it from the water, and it cannot be drawn up but with great difficulty; So albeit in the beginning of this

this ſtudy theſe things ſeem difficult, yet when the Student can dive into the depth (I do not ſay bottom) it is delightful, eaſe, and without any heavy burthen, ſo long as he keeps himſelf in his own proper Element, that is, his Profeſſion. Yet ſome adviſe, that the Student upon the firſt onſet of a Book, ſhould read it over curſorily, eſpecially if of difficulty, as a Preparatory to a more ſerious and deliberate peruſal, that upon his ſecond Incounter, there be nothing left for his inquiry, but thoſe things that are difficult and weighty. However, in every Caſe he muſt obſerve three thiugs; firſt, the matter of Law reſolved, and that not only the Point in queſtion, but alſo ſuch Rules as by Inference may be deduced thence, which may ſuffice hereafter for his furniſhing in the way of practiſe: for he cannot expect to find every Doubt reſolved *in termis*. By ſuch Rules I mean the Reaſons of every Reſolution in any Book-caſe, being reduced into ſhort Sentences, Propoſitions, or ſumma-

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ry Concluſions. *Quoniam brevitas plurimum delectat & quæ compendioſe traduntur tum, addiſcantur facilius tum diutius retinentur, univerſi legis ſententia in epitomen ſive ſummam redigenda eſt.* And all Rules drawn out of the Law, are of two ſorts, either being a Rule drawn from the Reaſon of the Caſe, or the caſe it ſelf ſhortly contracted.

For the firſt, A man hath for him and his Heirs th Nomination of a Clark in a Church to an Abbot, and the Abbot ought to preſent over the Clark nominated to the Ordinary. Now the King having the poſſeſſion of the Abby, preſented his Clark to the Church being void, without any Nomination. And the Opinion of the Court was, That the Party which had the Nomination ſhall have a Quare Impedit only againſt the Incumbent, without naming any Patron.

Whence may be drawn theſe Rules and Reaſons.

1. That

1. That the King cannot be ſued as a Diſturber.

2. That where the King preſents by wrong, the *Quare Impedit* ſhall be only againſt the Incumbent, without any Patron named.

3. The King cannot be an Inſtrument to any man as his ſervant.

4. By the King every Subject hath Juſtice done him. See *Dyer* 33. *H.* 8. 48.

Tenant in Tail of a Mannor, to which Villanies are regardant, infeoffeth one of the Villaines of one Acre parcel of the Mannor, and dies: albeit the Mannor deſcends to the Iſſue in Tail, yet he cannot ſeize his Villain till the Acre be recovered.

Whence flow theſe Propoſitions.

1. That when a man hath one thing by reaſon of another, there he ſhall have no benefit of the Acceſſary till the Principal be recovered.

2. Regardancy or Appendancy is not only to the whole Mannor, but to every Acre of the Demeans.

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3. A neceſſary Suit had by the Lord againſt his Villain, doth not infranchiſe him. Although none of theſe Propoſitions be expreſſed in the Caſe, yet are they neceſſarily implyed and drawn thence by Inference. And moſt commonly the Point reſolved is not the Tithe of the Law in the Caſe, as in the Commentaries in *Reingier* and *Fogoſſa*'s Caſe, the Point being only this, **whether a conditional Agreement were an Agreement within the Statute of**

And there we have theſe Points; That a Concord Executory is no bar in Treſpaſs, becauſe it doth not ſound in ſatisfaction, *fol.* 5. 2. That where a Deed is pleaded, it muſt be ſhewn in Court, that the Court may judge of its validity. 7. *b*. That to plead new matter ſubſequent to the Bar, is a Departure. 8. *a*. That it is not neceſſary to aver that which of neceſſity muſt be intended. 8. *b*. That the Law puniſheth no where there is a neceſſity for the doing of it. 9. *b*. That Statutes, although penal, ſhall be conſtrued according to

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the intent of the Makers. 10. *a*. And many more, which for brevity ſake I omit.

For the ſecond ſort of Rules, the Caſe contracted, as for Inſtance: That long Caſe of the Lady *Hales* and *Pettit* in the Commentaries, may be drawn to this ſhort Rule; **That if a Leaſe be made to two ſeverally for Years, and one is felo de ſe, it ſhall not go to the other by Survivorſhip, but is forfeited to the King.**

The ſecond thing to be obſerved is, the reaſon of the Law, and reſolution of the Caſe; For Reaſon is the life of the Law, and the Common Law it ſelf is nothing elſe but Reaſon; which is not to be underſtood (ſaith the Lord *Cook*) of every Mans natural Reaſons, for *Nemo naciter artifex*, but an artificial perfection of Reaſon; and this legal Reaſon is *ſumma ratio*, and therefore if all the Reaſons that is diſperſed into ſo many heads were united into one, yet could he not make ſuch a Law as the Law of

England

England is, becauſe by many ſucceſſions of Ages it hath been fined and refined by an infinite number of grave and learned Men, and by long experience grown to ſuch a perfection for the Government of this Realm as the old Rule may be juſtly verified of it, *Neminem opertet eſſe ſapientiorem legibus.* And the ſame Author ſaith, that *Ratio eſt anima legis,* (Reaſon is the Soul of the Law) for then we are ſaid to know the Law, when we apprehend the Reaſon of the Law, that is, when we bring the Reaſon of the Law ſo to our own Reaſon, that we perfectly underſtand it as our own; and then and never before, we have an excellent and an inſeparable property and ownerſhip therein, as we can neither loſe it, nor any man take it from us; and will direct us very much, the learning of the Law being chained together in many other Caſes. But if by his Study and Induſtry, he makes not the Reaſon of the Law his own, it is not poſſible for him long to retain it in memory: for

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ſaith the Lord *Cook*) 'The reaſon of 'the Law is the life of the Law: for 'though a man can tell the Law, yet if 'he know not the Reaſon thereof, he 'ſhall ſoon forget his ſuperficial 'knowledge; but when he findeth the 'right Reaſon of the Law; and ſo 'bringeth it to his natural Reaſon, 'that he comprehendeth it as his own 'this will not only ſerve him for the 'underſtanding of the particular caſe 'but of many other; for *Cognitio legis eſt copulata et complicata*, and this 'Knowledge will long remain with 'him 1 *Inſt.* 183. *b.*

The next thing to be obſerved in reading, is, the manner of Pleading, For, ſaith the Lord *Cook*, *It is a neceſſary part of a Lawyer to be a good Prothonotary.* And this is not withpraiſe For, ſaith *Littleton*, 'It is one 'of the moſt honourable, laudable, & 'profitable things in our Law, to have 'the Science of good Pleading in Actions real and perſonal. And his Counſel is to the Student, his *filius Artis*, to employ his courage and care to attain the ſame: which his

his Commentary ſaith, is obtained three manner of ways.

1. By Reading. 2. By Obſervation. 3. By Uſe and Exerciſe: *For in antient times* (ſaith he) *the Serjeants and Apprentices of* Law, *did draw their own pleadings, which made them good pleaders.*

Many a good Cauſe is daily loſt, and infinitely delayed, for want of good and orderly pleading; which if it were ſuffered to be done according to every mans fancy, it would bring all into confuſion; for in the pleadings are moſt viſibly diſcerned the Reaſons of the Law. Though in the Reign of *E.* 2. E. 1. and upwards, the Pleadings were plain and ſenſible, but nothing curious, having chief regard to the Matter, and not to Forms, which were often holpen with a *Quæſitum eſt*, and the Queſtions moved by the Court, and the Anſwers of the Parties, were alſo entred in the Roll. But the Judges finding the inconvenience that was like to enſue, in the Reign of E. 3. Pleadings grew to perfection, both without

without lameneſs and curioſity: so then the Judges and Profeſſors of the Law were excellently learned, and therefore ſaid Juſtice *Thorning* in H. 4. that in the time of E. 3. the Law was in a higher degree then it had been at any time before; for (ſaith he) before that time the manner of Pleading was but feeble in compariſon of that it was afterwards in the Reign of the ſame King. And in the time of H. 6. the Judges gave a quicker ear to Exceptions to Pleadings, then their Predeceſſors formerly did, or their Succeſſors ſince have done.

In the next place, he muſt in his courſe of Reading obſerve the Affections of the Law: As, that it favours Life, Liberty, and Dower; and that it hates private Cuſtoms, and Force, according to that of *Cicero*, *Nihil eſt exitioſus civitatibus nihil tam contrarium juri et legibus nihil minus civile et humanum quam in compoſita et conſtituta Republica quicquid agi per vim.* Nothing is more deſtructive to a city, nothing

thing ſo contrary to Laws and Right nothing more uncivil and inhumane, than in an orderly and well contrived Common-wealth any thing to be done force.)

He muſt likewiſe bring his Underſtanding anſwerable to the intention of the Law, and to this purpoſe often to conſider the Fictions of the Law; which ſaith Mr. *Fulbeck*) the Common Law of *England* doth ſhew wonderful ſharpneſs in, and a moſt excellent ſubtilizing things, whereof common ſenſe hath but a confuſed knowledge. As, **that a Term an a Free-hold of the ſelf ſame thing, may be both in one Man at one time.** As, if Tenant for Years die, having made his Executor, and he purchaſe the Reverſion here both the Term and Fee-ſimple are in the Executor, to ſeveral purpoſes. So of a Remitter to Land to ſome intent, but not to another: **As, if Tenant in Tail diſcontinue and his Son and Heir apparent diſſeizeth the Diſcontinuee to the uſe of the Father, the Tenant in Tail**

teil dieth, the Son is in his Remit er against all but only the discontinuee. That a title may be executed to one intent, ye not to another. That a thing may be extinct and in esse at one time, in divers respects. That if the Disseizee come upon the Land at the request of the Disseizor, without any more, it is no Entry; and many such like

He must likewise carefully observe the diversities and differences of Points and Matters of Law: for these are the surest Weapons a Lawyer is to be armed withal. For instance: It is true that the Ordinary hath power of placing and displacing of Seats and Isles in a Church. But with this Diversity, That where an Inhabitant and his Ancestors onely, have used time out of mind to repair an Isle in the Church, to sit there with his Family, and to bury there, this makes the Isle proper and peculiar to his house, and he cannot be displaced Crook Pag 367.

by the Ordinary. But constant sitting and burying there, without using to repair, doth not give any Property: but the Ordinary may appoint whom he pleaseth to sit there.

Ployd. Comment. 17. b. So if a Lease for years be made reserving Rent, and for non-payment a Forfeiture of the Term, there is a Diversitie. If the Proviso in the Lease be, that if the Rent be behind, the Lessor shall reenter, there Entry is requisite, and before Entry the Lease is good: but if the words be, that the Lease shall be void, there Entry is not requisite; for it cannot be made good by any after-Act. Rasure of a Deed by the party, though in a place not material, makes the Deed void. But with this Diversitie (saith

Croke 1 Justice *Berkley*) If a Lessee for yeares raz. his Lease in a place not materiall, it makes the Deed void, so that the Lessee can take no advantage of any Covenant, &c. of the Lessor in the same *Deed*; but the Deed is not void as to the Estate: for notwithstanding such rasure

raſure, the Eſtate is good. This indeed is an ingenious diverſity; but *quere*, whether according to Law, for Juſtice *Cook* doubteth thereof.

He muſt likewiſe conſider the ends of the Law. *Inventæ ſunt Leges ad ſalutem Civium, civitatumque incolumitatem, vitamque hominum & quietam & beatam.* (The Lawes ſaith *Cicero*, were invented for the preſervation and ſafety both of City and People, that they may live a quiet and happy life.) The end of the Law is to ſettle and maintain property, and alſo to preſerve the perſons as well as the Eſtates of Men, and to diſpoſe every thing for the good of the Common-wealth. And therefore favours thoſe things that are done for the good of the Common-wealth, As, if a man kill a Felon in purſuit, if he cannot otherwiſe take him, is not criminal; ſo he may kill in defence of his perſon, or goods, as if one attempt to rob him. On the other ſide, it hates things that are deſtructive to the Common-wealth in a Cicero leg.

more especial manner; as all publick Wrongs, Monopolies, and the like.

In a word, he must pass by no thing that is worthy the observation. As definitions of things, the placing of words in Deeds, and Wills, and the like; the latitude and extent of those words as also their omission and addition. For, saith the Lord *Cook. There is nothing, seem it never so useless, but will stand our Student in stead some time or other.*

car. c 4 Mr. *Fulbeck's* Rules to be observed by our Student, are these.

1. That in the understanding of the Law, he must not vary nor depart from the proper sense and signification of the words, unless thereby some Absurdity, Inconvenience, or Injustice may appear.

2. That where the Law is obscure, that sense must be taken which is least prejudicial,

3. That when Opinions are repugnant, it is the safest way to follow that Opinion which is most agreeable to Reason.

4. That

4. That the best Interpreter of the Law, is common Reason and Intendment.

5. That things which be odious in Law, must be restrained, and the things which be favorable enlarged.

6. That when a thing is forbidden all things that follow thereof are likewise forbidden.

7. The validity of an Act must be specially favoured, unless therebe manifest nullity in the proceedings. But these indeed are rather Rules of Law than Study yet certainly worthy of our Students consideration.

In Reading, our Student must not give himself over to such Books as are besides his study, much less that conduce nothing to it He must not be at one Book to day, and another to morrow, wandring like a sickly Stomach that hath an Appetite to all things, but can digest none. *Nusquam est qui ubique est.* (He that is every where is no where.) And if fickleness weary him from one Book to another, let him follow *Seneca*'s Advice; *Probatos itique libros sem*

per lge, & ſiquando ad aliosdiverter libet, ad priores redi. [Read alwayes approved Authors, and if thou be minded at any time to change them, be ſure to return to the firſt] to keep your ſelf alwayes within the Circle of approved Authors. Nor do I deny any moderate uſe of other Books, ſo far as they ſerve to recreate a weary Mind, as certainly they are the beſt for that purpoſe, according to that of *Seneca*, (*Alit lectio ingenium & ſtudio fatigatum, non tamen ſine ſtudio reficit.* (Reading nouriſheth the Underſtanding, and when it is wearied with ſtudy, yet is not refreſhed without Study)) but no further. To turn Spie, but no Inmate. *In aliena caſtra tranſire*, (with the ſame Philoſopher) *non tanquam transfuga, ſed tanquam explorator.* And of ſuch Hiſtories which demonſtrate the Government and Laws of Nations, are moſt advantagious for this peruſal, eſpecially the Chronicles of the Kings of *England* and the Hiſtories of the particular Counties, which contain moſt of

of the private Cuſtomes uſed in the ſame, which will give great light towards the underſtandings of the ancient Books of Law. For ſaith the Lord *Cook*, *Oftentimes, for the better underſtanding of our books, the adviſed Reader muſt take light from Hiſtory and Chronicles, eſpecially from deſtinction of times* lib. Co 43 a

The next thing our Student muſt obſerve in his courſe of ſtudie, is Writing. Reading muſt not be his only buſineſs, but he muſt put what he reads into writing. *Nec ſcribere tantum* (ſaith the Philoſopher) *nec tantum legere debemus- altera res contriſtabit, & vires exhaurit, de ſtilo Sico, altera ſolvit ac diluit. Invicem hoc illo commutandum eſt, & alterum altero temperandum, ut quicquid lectione collectum eſt ſtylus redigat in corpus.* (We ought not to wright only nor read only: the one renders the Work ſad and melancholy, and doth exhauſt the Spirits, I mean Writing; the other doth looſen and diſſolve them. We muſt by turns change one with the other, and temper this Seneca

that: that whatsoever we have gotten by Reading, Writing, may resolve into a body) And saith the Lord Cook, *Reading, Hearing, Conference, Medatation, and Recordation, are necessary to the knowledge of the Law, because it consisteth upon so many and almost infinite perticulars.* But an orderly Observation in writing, is most necessary of them all; and he that at length by these means, shall attain to be learned, when he shall leave off quite for his gain or his ease, soon shall he (I warrant him) loose a great part of his learning, without orderly observation in writing. Our student therefore must out of his Reading extract Aphorisms and Rules of Law; which manner is very advantagious to improve a mans knowledge: For first it trieth whether he be superficial or solid; for Rules and Aphorisms, except they should be ridiculous, cannot be made but of the pyth and hart of Sciences; for discourse of illustration is cut off, Recitals of Examples are cut off, Description of practice is cut off: so there

there remaineth nothing to fill the *Rules* and Aphoriſmes, but ſome good quantity of Obſervation. And outof theſe Aphoriſmes and Rules muſt he make a Comnon Place for ſaith the Lord *Bacon*, *Pleaders ſhould have the places whereof they have moſtuſe, readi handled in all the veriety that may be.* And *Cicero* himſelf being broken into it by great experience, delivereth it plainly, That whatſoever a man ſhall have occaſion to ſpeak of, if he will take the pains, he may have it in effect pre meditated and handled in theſe Common Places, ſo that when he cometh to a particular he ſhall have nothing to do but to put to names, times and places, and other circumſtances of individuals. And therefore the larger our Students Anticipation is the more direct and compendious is his Search. And if upon every occaſion a Practiſer ſhould be to look into the vaſt body of the Law for reſolution, I doubt he may ſtay long enough without his errand. Therefore muſt this great Deep be

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De Oratore.

drawn out into Rivulets, through which we may easily wade. *Ingens corpos ejus* (saith *Seneca*) *in membra disponi debet.* This great body must be disposed into Members or Parts; which being done, we may the easier atain the knowledge of the Law. And herein must we imitate the Bees which gather from every Flower what is fit for there purpose, and then whatsoever they gather they dispose and digest into Hives. *Apes debemus imitari, quæ ut vagantur et flores ad mel faciendum idoneos carpunt, deinde quicquid attulere disponunt, ac per favos digerunt; Ita debemus quæcunque ex diversa lectione congessimus separare: melius enim distincta servantur.* (So should we do that whatsoever we gather from diversity of reading, we should seperate: for being so disgested and distinguished, they are the better retained) For the whole being (as it must) confusedly read, if the matters be refearred to their several places, are fited for Consideration and Meditation *Quæ in universo confu-*

Sen. Ep.

confuſius uidebantur, in parter diviſa diligeuntus conſiderantur. Et homines facilius per partes in cognitionem totius adducuntur (What ſeem confuſed in general; being diviſed into parts are more diligently conſidered. And men are eaſieſt brought to the knowledge of the whole by the parts.) And Mr. *Fulbeck* ſaith, that as well for the Students eaſe, as for preſerving and continuing his Memory, it is a profitable courſe for him under Titles, to digeſt the Caſes of the Law, into which he may transferre ſuch things as he hears or reades: and other mens Abridgemens are litle available to ſuch as read litt'e; but that which is got by our ſweat & labour, we do firmly retain, and in it we do principally delight Neither hath there been any Learned and Judicial Lawyer, who hath not made a Collection of his own Therefore we may conclude that Common Places are matters of great uſe and eſſence in ſtudy, as that which aſſureth Copy of Invention, and contracteth Judgement to

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a ſtrength. And herein he muſt uſe a method and analyſe the matter with all its parts and incidents. For Method carries a kind of demonſtration in Orbe, or Circle, one part illuminating another. And Method conſiſteth moſt of Deviſion: and it helpeth our Student much to make good Diviſions for he that deviſeth things aright, can never erre in the order of things. *Diviſio* (ſaith *Bracton*) *triplicem operatur effectum; primo enim animum legentis inſtruat, ſecundo mentum intelligantiæ præparat, & rectio artificioſe memoriam reformat.*

Bacon de Aug Scient.

For the ordering of his Common Places: He muſt be in with the terms of Art, to imitate the wiſdome of the Mathematicians, in ſetting down in the very begining the definition, or for want of that, a full deſcription of the Termes. Which being done, then to place the matter with the reſpective diviſions under the ſeveral branches of the definition. And for our Students Inſtruction in his Definitions, I refer him

to

to Sir *John Doddridge*, who in his *English Lawyer* hath fully explained that point. And if this order be followed he may easily find what he seeks for, without any tedious search. But *Via longa per præcepta, per exempla brevis.* I will therefore, according to my small measure of knowledge analyze *Littleton's* chapter of *Dower*, with the Commentary, by way of such a Common Place. Which being most of it Expositary, wants that diversity of Cases which reading of the Year-books and Reports affords; and therefore cannot be drawn according to my Method into Rules and Aphorisms, nor do I take in the whole Matter, and all the Cases of the Chapter, but only one or two points under each Branch, to chalk out the form of such a Common Place. Seneca.

Dower is an Estate of Freehold during the life of a Lawful Wife, appointed out of an Inheritance, whereof the is Dowable, which Estate beginneth upon and after

ter

ter the Death of her Husband.

To begin with the Term. Dower is called *Dos* in Latine, *Ex donatione, & est quasi donarium*, because the Law it self, or the Husband of his own assent, giveth it to her. And this word *Dos* at this day is not taken for any thing the Wife brings with her in marriage to her Husband: for if Land, then it is called Frank-Marriage, if Money or other Goods, that is called her Marriage-portion. Although formerly *Dos Mulieris* was also applied to them. *It* is also called *Maritagium*.

I. Dower is an Estate of Freehold during Life.

Every one that hath an estate in any Lands or Tenements for Term of life, is called Tenant of Freehold. But every Tenant of Freehold, so called, holds not for life; as Tenants by Statutes, Elegits, &c. are said to hold Lands, *Ut liberum Tenementum* though their Estate is no longer then until their Debts be paid: but they

they have a Similitudinary Freehold becauſe they have the ſame Actions with tenant of Freehold.

II. If a Lawful Wife.

Here three things are to be conſidered: that is to ſay,

1. Her Marriage

Firſt, The Marriage, whether *de jure* or *de facto*, muſt continue: for *Ubi nullum Matrimonium, ibi nulla Dos*; if the Marriage be Diſſolved or Diſcontinued, Dower ceaſeth.

1. The Marriage is diſſolved by divorce, which is either,
   1. *A vinculo Matrimonii*, for ſome cauſe before the Marriage, as Conſanguinity; and he eby Dower ceaſeth.

      Or,

   2 *A menſa & thoro*, for ſome cauſe ariſing after Marriage, as Adultery: by this Dower doth not ceaſe.

   But *Dower ad oſtium Eccleſia* is not hindred by either.

2. The Marriage is diſcontinued if the Wife Elope from her Hus-

Husband until he be willingly reconciled to her.

Elopement is,

1. If ſhe goeth willingly with or to the Avowtrer: this is a departure and a tarrying, albeit ſhe remaineth not continually with the Avowtrer
2. If ſhe tarrieth with him againſt her will
3. If the Avowtrer turn her away.
4. If ſhe cohabit with her Husband by the cenſure of the Church.

Secondly, If the Marriage be *de facto* and not *de jure*, yet if the Wife be at age, and the Husband die before any Divorce, ſhe ſhall be indowed.

2. Her Age.

The Wife muſt be of the age of nine years at the time of her Husbands death, and then ſhall be indowed, whatſoever age her Husband be of. For though *conſenſus*, and not *concubitus facit matrimonium*, and conſent cannot be by a Woman before

before twelve, or by a man before fourteen: yet it is *Legittimum Matrimonium quoad dotem.* And the Biſhop upon Iſſue joyned in a Writ of Dower *Quod nunquam fuerunt copulati legitimo Matrimonio*, ought to certifie that they were coupled in lawful Matrimony.

If a Man take a Wife of the age of ſeven years, and after alien his Lands, and the Wife attaineth to the age of nine years, and the Husband dies, the Wife ſhall be indowed.

3. Her Capacity.

An Alien ſhall not be indowed.

If a Man take an Alien to Wife, and after the Husband Alien the Land, and after ſhe is made Denizen, ths Husband dieth, ſhe ſhall not be indowed, becauſe her Capacity to be indowed came by denization, after the alienation: but otherwiſe it is in caſe of naturalization.

If the King take an Alien to Wife and dieth,, ſhe ſhall be indowed by the Law of the Crown.

If a Free-man take a Neif to Wife, and dieth, ſhe ſhall not be indowed.

If

If the Husband after Marriage alien the Land, and the Wife is attainted of Felony, now is she disabled; but if she be pardoned before the death of her Husband she shall be indowed.

III Appain ed.

Dower is appointed three wayes. 1. By the Act of Law. 2. By the Custom. 3. By the Act of the party.

Dower appointed by Act of Law, which is called, Dower at Common Law, is an estate of Freehold for the life of a Lawful Wife, of the third part of all those Inheritances dowable, whereof the Husband was seized of an Estate of Inheritance during the Coverture given by Law to be compleat after the death of her Husband.

This special description of Dower at Common Law, takes up all that of Dower in general; therefore waving that, I will prosecute what is additional in this. For the branches of the Difinitions are the same, and the Rules and Cases of that

fit

fits this: therefore what is ſaid already, I will not repeat but briefly.

I. Dower is an Eſtate of Freehold for the life of a lawful wife.

This is the ſame with the former Deſcription *interminis* therefore the Rules and Caſes that are comprehended under theſe Branches may be fetched thence. The difference is from theſe parts, of a third part, ſeized given by Law; which being paſſed over, the reſt makes up the general deſcription.

Of the third part.

Of ſuch things as may be divided, the wife ſhall be indowed of a third part But of Inheritances that be entire, whereof no diviſion can be made by metes and bounds, though the Woman cannot be indowed of the thing it ſelf, yet a Woman ſhall be indowed thereof in a ſpecial manner. As if a Mill a Woman ſhall not be indowed by metes and bounds, nor in Common with the Heir, but may be indowed of the Third Toll-diſh, or *De intergro molendino*

dino per quemlibet tres menſem; ſo of a Villain, every third dayes work.

1. Of all Inheritances dowable.

A Woman ſhall be indowed of the third part of the profit of Stallage, Fayr, Office of the Marſhalſes, the keeping of a Park, Dove-houſe, Piſcarry, of the third preſentation to an Advowſon, of the third part of the profits of Courts, Fines, Harriots, Tithes, *&c.*

But in ſome Caſes of Lands and Tenements which are diviſible, and which the Heir of the Husband ſhall inherit, yet the Wife ſhall not be indowed. As, if the Husband make a Leaſe for life of certain Lands, reſerving Rent to him and his Heirs, and he taketh Wife and dieth, the Wife ſhall not be indowed of the Reverſion, becauſe there is no ſeizin in Deed, nor in Law, of the Freehold, nor of the Rent, becauſe the Husband had but a particular Eſtate therein, and no Fee-ſimple.

If the Husband make a Gift in tail

tail reſerving Rent to him and his Heirs, and after the Donor takes a Wife and dieth, the Wife ſhall be indowed of this Rent becauſe it is a Rent in Fee, and by poſſibility may continue for ever.

Of a Common certain, a Woman ſhall be indowed, but not of a Common in groſs *ſans* number.

Of Rents Service, Charge, and Seck ſhe ſhall be indowed; but of an Annuity that chargeth only the Perſon, and Iſſueth not out of Land, ſhe ſhall not be indowed.

A Woman ſhall not be indowed of a Caſtle, that is maintained for the neceſſary defence of the Realm, becauſe it is not to be divided: otherwiſe of a private Caſtle for the Habitation of the Owner.

Of the principal Manſion or capital Meſſuage the Wife ſhall be indowed *Si non ſit caput Comitatus ſive Baroniæ*, for the honor of the Realm, or publick defence.

In every Caſe where a Woman taketh a Husband ſeized of ſuch an Eſtate in Lands or Tenements, ſo as by

by possibility the Husbands Issue on her body begotten may inherit the same Tenements, as Heir to the Husband, of such Tenements she is dowable, otherwise not.

III. Whereof the Husband.

If the Husband be an Alien, the Wife shall not be indowed; so if the Husband be the Kings Villain, otherwise of the Villain of a private Person, if the Wife be intitled to Dower before the Entry of the Lord. So if the Husband be attainted of Treason done after the title of Dower, she shall not be indowed.

IV. Was seized.

If the Husband be seized in Deed or in Law, it sufficeth, but one of them he must be.

The Wife shall not be indowed of every Seizin in Law or in Deed. For if there be Grand-Father, Father, and Son, and the Grand-Father seized of three Acres during the Coverture dies, the Father dies, the Wife of the Grand-father is indowed of one Acre and dieth, the Wife of the Father

Father ſhall be indowed only of the two Acres reſidue: for the Dower of the Grand-mother is paramount the Title of the Wife of the Father, in caſe of Diſcent; otherwiſe in caſe of Feoffment; as if the Grand-father had infeoffed the ſame.

In that caſe, if the Fathers Wife be firſt indowed, it is otherwiſe. For if after the deceaſe of the Grand-father and Father, the Son enters and indows his Mother of a third part, againſt whom the Grand-mother recovereth a third part and dieth the Mother ſhall enter again into the Acre recovered by the Grand-mother

The Wife likewiſe ſhall not be indowed of the Land given in Exchange, and the Land taken in Exchange; yet the Husband was ſeized of both: but ſhe may have her election.

Of a Seizin for an inſtant, a Woman likewiſe ſhall not be indowed: As if the Counſee of a Fine doth by the ſame Fine grant and render the Land to the Counſor, the Wife of

of the Counſee, ſhall not be indowed.

If two Joyntenants be in Fee, and one make a Feoffment, his Wife ſhall not be indowed.

V. Of an Eſtate of Inheritance.

A Woman ſhall not be indowed of every Eſtate of Inheritance. For if Tenant in tail general make a Feoffment in Fee, and taketh back an Eſtate to him and his Wife, and to the Heirs of their two bodies and they have Iſſue, and the Wife dieth, the Husband taketh another Wife, and dieth, this wife ſhall not be indowed: for during the Coverture he was ſeized of an Eſtate tail ſpecial.

So if in this Caſe he had taken back an Eſtate in Fee, and after had taken Wife and had Iſſue by her, yet ſhe ſhall not be indowed, for that the Fee-ſimple is vaniſhed by the Remitter, and her Iſſue hath the Land by force of the Intail.

VI. During the Coverture.

Seizin is not neceſſary to be continued

tinued during the Coverture, as Marriage muſt. For albeit the Husband Alien the Lands and Tenements, or extinguiſh the Rent or Common, yet the Woman ſhall be indowed.

VII. Given by Law.

Dower is a proviſion which the Law caſts upon the Woman without any act of hers, and is *præmium pudoris*, therefore favoured by that Law that gives it.

Tenants in Dower ought to be free from Tallage: Tenants in Dower ſhall not be diſtrained for debt due to the King by the Husband in his life time, in the Lands which ſhe holds in Dower. With many other Priviledges which the Law indulgeth to Tenants in Dower.

VIII. To be compleat after the death of her Husband.

Mortuo viro confirmatur dos.

(Death is the efficient cauſe of Dower,)

It muſt be a natural, and not a civil Death. For if the Husband enter into Religion, yet the Wife

ſhall not be endowed until he be naturally dead.

IX. After the Death of her Huſband.

By the Statute of *Magna Charta* ſhe ſhall tarry in the chief houſe of the Husband by the ſpace of forty days after his Death, within which time Dower ſhould be aſſigned her; and this is called a *Quarrentine*. But if the Wife marry within the forty dayes, ſhe looſeth her Dower.

The Aſſignment is either by the Sheriff, by the Kings Writ, or by the Heir by conſent: To which eight things are incident.

1. That it be certain.

2. It muſt be of ſome part of the Land whereof ſhe is dowable, or of a Rent or ſome other profit iſſuing out of the ſame.

3. The Aſſignment muſt be abſolute, and not conditional.

4. It muſt be made by him that is Tenant of the Land.

5. It muſt be without covin or colluſion.

6. An Aſſignment by a Diſſeizor with-

without covin, if not prejudical to the Diſſeizee, is good.

7. It muſt be made by him that hath a Freehold, or againſt whom a Writ of Dower doth lie.

8. Before the Guardian in Chivalry enter, the Heir within age may aſſign Dower.

If no Aſſignment be made within the forty days, and the Husband die ſeized, the Wife ſhall recover damages from the time of her Husbands deceaſe.

The Wife muſt demand her Dower, elſe *touts temps priſt* pleaded, will bar her of her Damages.

If iſſue be joyned upon the Husbands death, it ſhall be tryed by Witneſſes, and not by a Jury.

2. **Dower by the Cuſtome.**

By the Cuſtom of ſome County the Wife ſhall have half of the Tenements which were her Husbands Inheritance during the eſpouſals. In ſome Towns and Burroughs ſhe hath all.

By the Cuſtom of Gavel-kind, the Wife ſhall be indowed of the

moiety, so long as she keeps her self sole and without child; which she cannot wave, and take her thirds for her life.

As a custom may inlarge, so may it abridge Dower, and restrain it to a fourth part.

3. Dower appointed by the act of the Party.

1. *Dower ad ostium Ecclesiæ* which is,

Where a Man of full age seized in Fee-simple, being to be married at the Church-dore, after alliance made betwixt him and the Woman, indoweth her of some part of his Land and doth declare the quantity and certainty of the Land, which she shall have in Dower.

I. Where a Man of full Age.

The Husband at the time of his indowment must be of full age, that is, of one and twenty.

But if he be under age, he may indow her by the assent of his Guardian

dian, and it shall be good, albeit the Husband die before his full age.

II. Seized in Fee-simple.

If Tenant in Tail indow his Wife at the Church-door as is aforesaid, this will nothing at all avail the wife: for after the decease of her Husband the issue in Tail may enter upon her possession; and for want of issue, he in the reversion.

III. At the Church-door.

It is not good if it be made at a Castle or a House door, but must be at the Church or Monastery door.

IV. After affiance.

An Assignment of *Dower ad ositum Ecclesiæ* cannot be made before Marriage, for that before she hath no title to have Dower.

This Assignment is good without Deed, because he cannot make a Deed to his Wife.

V. Of some part of his Land.

Antiently it was held, that a Man could not have indowed his Wife *ad ostium Ecclesiæ*, of more then a third part, but of less he might: but

at this day he may indow her of as much as he liſt.

VI. And duly declare the quantity and certainty.

A Woman endowed *ad oſtium Eccleſiæ*, may enter without Aſſignment of any; and in all caſes where the certainty appeareth, the Wife may enter without Aſſignment.

2. *Dower ex aſſenſu patris*, which is,

Where Father is ſeized of Tenements in Fee, and the Son & Heir apparent, when he is married, indoweth his wife at the Church-dor, of parcel of his Father Lands, with his Fathers aſſent, by Deed, and aſſigneth the quantity of the parcels.

Where the Father is,

I. Seized of Tenements in Fee.

Tenant for life of a Carve of Land, the reverſion to the Father in Fee, the Son and Heir apparent of the Father indoweth his Wife of this Carve, by the aſſent of the Father;

the

the Tenant for life dyeth, the Husband dyeth, the Reverſion was a Tenement in the Father, yet is this no good Aſſignment *ex aſſenſu patris*, becauſe the Father at the time of the aſſent, had but a Reverſion expectant upon a Free-hold, whereof he could not have indowed his own Wife.

II. **The Son and Heir apparent.**

It muſt be ſuch a Son and Heir apparent, as muſt of neceſſity ſo continue. And therefore the youngeſt Son and Heir apparent in Burrough-Engliſh cannot indow his Wife *ex aſſenſu patris*, becauſe the Father may have a younger Son then he. So of Heirs in Gavel-kind, if the Heir apparent be within the Age of one and twenty, yet the Aſſignment is good.

III. **Indoweth his Wife.**

Albeit the Inhabitance is in the Father, yet in reſpect and perpetual appearance of the Heir, the Heir apparent doth indow, and the Father doth but aſſent. And therefore if

the Father endoweth the Wife o his Son, that Indowment is void.

IV. At the Churchdoor.

It may be likewise at the Monastery door, but no where else, as is shewn of *Dower ad ostium Ecclesiæ.*

V. Of parcel of his Fathers Lands.

He may in this, as in *Dower ad ostium Ecclesiæ*, indow his Wife of what quantity he pleaseth.

VI. Unto his Father's assent.

An Indowment *ex assensu fratris*, or *consanguinei*, is not good because there is no apparance of a constant and a perpetual Heir. But *ex assensu matris* is as good as *ex assensu patris*, because there is the same constant appearance of the Heir.

VII. By Deed.

The Wife must have a Deed of the Father to prove her Assent.

VIII. And assigns the quantity of the parcels.

In this, as in *Dower ad ostium Ecclesiæ*, the certainty may be expressed.

The Wife having the quantity assigned

assigned, after the death of her Husband, shall enter, albeit the Father be alive.

These Dowers for the most part ensue the nature of Dower at the Common Law. And for these the Wife may have a Writ of Dower, albeit they be certain, as for the third part at the Common Law.

These Dowers are good, though the Wife, at the time of the death of her Husband be within the age of nine years.

3 *Dower de la plus beale*; which is,

Where one is seized of twenty Acres no den in *English* service, and as many in Socage, taketh Wife, and hath issue, and dies, his Son within age, and the Lord enters as Guardian, and the Wife brings a Writ of Dower against the Guardian in Chivalry, he pleading, that the Wife is Guardian in Socage; it shall be adjudged by the Court, that the wife indow her self of the fairest of

the Tenements which ſhe hath, as Guardian in Socage, after the value of the third part, which ſhe claims by her Writ.

I. Where one is ſeiſed of twenty Acres.

If the Guardian in Socage have not ſufficient Aſſets in her hands, to the value of her Dower, ſhe may retain what ſhe hath in part, & recover againſt the Guardian in Chivalry, for part, to make up a third part.

II. And he Lord enter

The Lord is not poſſeſſed as a Guardian, againſt whom a Writ of Dower lieth, until he doth enter.

III. And the Wife brings a writ of Dowre against the Guardian in Chivalry.

This Writ whereby the Wife is to recover a Free-hold, lieth againſt the Guardian in Chivalry, though he have but a Chattel; and not againſt the Heir, who is Tenant of the Free-hold. And if the Guardian die, it ſhall be brought againſt his Executors.

IV. The

IV. **The Guardian pleading.**

He may plead this, or detinue, or eloigning of the body of the Ward, but he ſhall not plead detainment of Charters.

V. **It ſhall be adjudged by the Court.**

Without Judgement, Guardian in Locage cannot indow herſelf.

VI. **What the Wife indow herſelf.**

The Wife may take her Neighbours, and in their preſence indow herſelf by Metes and bounds of the faireſt part of the Tenements holden in Socage, to have and to hold to her for Term of life.

And under the Branches of theſe ſeveral Definitions, or rather Deſcriptions, our Student may reduce in ſhort Rules all the Caſes that he ſhall meet withal in the whole courſe of his reading touching this ſubject. Which Rules ſo collected, ſerve not only for the better knowledge of the Law, but for it's uſe and practice. For the Law being

ing of such extent, and of so many infinite numbers of Cases, as cannot be comprehended by the capacity of Mans understanding, he must be furnished with such Rules and Propositions, whereunto he may resort for his Information in his Opinion, and be furnished with Authorities to maintain his opinion, and Clyents Cause, in his course of Practice. Neither doth he deserve the name of a Lawyer, who hath not collected Precepts and Conclusions, for the decision of present and future Controversies.

Sir John Dederidg Eng law

Neither in this our Students Common Place do I allow of transmitting the whole Case to it's proper place; which is not only tedious and painful, but of little profit, and takes up more time then our Student can well spare. Certainly the most delightful way, and most profitable, is to reduce the whole Case to as short a Proposition, as words can bear, and so to refer it to its proper place, without troubling himself with the circumstances, of the Persons, Time,

and

and Place, or any other matter that is not essential to the conclusion drawn therefrom. And when parallel Cases occur, one Rule serves; only let him add, for further Authority the Book and Page, by which means one may run over the whole course of the Law in a small volume which he may with ease carry along with him when occasion requires, without troubling himself with those vast Volumes, only sufficient to contain the Abridgement of all the particular Cases, which is a labour of unspeakable toyl; and wherein he shall never be free from confusion. To adhere therefore and wholly to respect particular Cases without any observation of the Rules of the same, and to charge our Memory with infinite singularities, is utterly to confound the same, and to ingender in our selves that wrong opinion, (that many have amiss entertained) that *there is nothing certain in our Law.* Short and refined Reasons and Rules of long and perplexed Cases, do through their soundness satisfie

ſatiſfie our Judgement, through their brevity and ſhortneſs wonderfully delight the mind, through their pithineſs they may be deemed incomparable treaſure, yeilding a great meaſure of Wit, wonderfully ſharpning our Underſtanding; of infinite uſe in all Affairs, containing much worth in few words, no burthen to Memory, but once obtained are ever retained.

The next thing to be obſerved by our Student is, Conference about thoſe things that he reads and writes. Reading without hearing is dark and irkſome; hearing without reading is ſlippery and uncertain; neither of them yeild ſeaſonable fruit, without conference. Students, ſaith Mr. *Fulbeck*, ſhould not do amiſs, if at certain times they meet amongſt themſelves, and do propoſe ſuch things as they have heard or read, by that means to be aſſured of the opinion of others in thoſe matters. By this means they may be brought better to underſtand thoſe things, one perhaps ſeeing and giving

1 Ep. C. ad . rel.

Prepar. c. 2.

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a Reason, which the other is not aware of; and if he misapprehend a Point of Law, the other may instruct him therein. Hereby are they likewise brought more firmly to retain in Memory the things that they have read or heard.

Often conference and private debating of Points of Law, is of great advantage: for thereby is the Wit, the Memory, and the Tongue, very much furthered and holpen, and a Man is made more ready and bold for publick Matters; and the Truth, which is the mark of study, doth more easily appear. And when the Mind by long Reading is fraught with many Thoughts, the Wit and the Understanding do clarifie and break up in the communicating and discoursing with another he tosseth his Thoughts more easily, and marshalleth them more orderly, he seeth how they look when they are turn'd into words. Finally, he waxeth wiser then himself, and getteth more by an hours discourse, then a days reading. It was well said by *Themisticles*

miſtocies to the King of *Perſia*, That *Speech was like cloath of Arras opened and put abroad, whereby the Imagery doth appear in figures; whereas in Thoughts they be but as in a pack.* Nay of ſuch exceeding advantage it is, that a man (ſaith the Lord *Bacon*) had better relate himſelf to a Statute or Picture, then to ſuffer his Thoughts to paſs in ſmother: for he learneth of himſelf, and bringeth his own Thoughts to light, and whetteth his Wit as againſt a ſtone, which it ſelf cuts not. *Continual poring on Books* (ſaith *Socrates*) *hurteth and weakneth the Memory very much*: affirming Conference to be of great uſe, of ſuch uſe, as *Euripides* doth not ſtick to ſay, that Conference and Converſe was the Mother of all Sciences and Arts. And it is true that *Socrates* ſaith, *Learning is to be ſooner attained unto by the Ear in diſcourſe and hearing then by the Eye in continual reading.* Therefore muſt our Student (as Mr. *Plowden* ſaith was done by him) be preſent at all Moots

Moots and Readings, and to frequent all places in Courts of Chancery, and to give diligent ear to the debating of Questions at Law (by those especially that are of fame and credit in learning chiefly of Arguments and Judgements made and given in the Kings Courts upon Demurrers in Law, and to commit those things he hears, and the Judgment thereof to Writing, and not to trust slippery Memory. And certainly this hearing of the Arguments made in the Courts of Judicature, are the best means of enlightning and increasing our Students knowledge in the Law: for what he finds briefly, and perhaps obscurely delivered in a Book, he hath there fully and clearly delivered at the Bar or Bench, and most commonly illustrated by confirming it with Presidents.

Another thing to be observed by our Student, is Meditation. And (*Meditatio est frequens cogitatio, modum, & causam; et rationem unius cujusque rei investigans.*) (Meditation

tion is a frequent cogitation, ſearching into the manner, cauſe, and reaſon of every thing) He muſt ruminate upon, and conſider of thoſe things that he reads, according to that of the Philoſopher; *Explicandus eſt animus, & quæcunque apud illum depoſita ſunt, ſubiende excutiendo, ut parata ſint quoties uſus exegerit.* (Our mind muſt be unfolded, and whatſoever is laid up there ſhaken now and then, that they may be ready as often as occaſion requires.) Without this, our pains will little avail (ſaith the Lord Cook) *Omnis perfectus ex lectione & meditatione procedit, quæ enim noſcimus lectione diſcimus, quæ didicimus meditationibus conſervamus.* (All Proficiency is from Reading and Meditation: for what we do not know, we learn by Reading; and what we learn, we retain by Meditations.) Our Reading keeps proportion with our Meats, which if it be ſwallowed whole, is rather a burden then nouriſhment. *Quod in corpore noſtro videmus operari naturam*

ſeneca,

Ep. ad 1 relat

ram alimenta quæ accepimus quamdiu in ſua qualitate perdurant, et ſolida innatant ſtomacho, oneri ſunt; at cum ex eo quod erant mutata ſunt, tunc demum in vires et ſanguinem tranſunt: Idem in illis quibus aluntur ingenia proſtemus, ut quæcunque hauſimus non patimur integra eſſe, ne aliena ſunt coquamus illa, alinquin in memoriam ibunt, non ingenium. (What we ſee nature doth in the body, the nouriſhments that we receive as long as they remain in their own quality, and ſwim whole on the ſtomach, they are a burden; but when they are changed from what they were, then do they turn to ſpirits and blood: The ſame we muſt do in thoſe things, wherewith the Underſtanding is nouriſhed, that whatſoever we have ſwallowed we ſuffer not to continue whole; we muſt concoct them, leſt they be none of ours, for elſe they paſs into the Memory, but not into the Underſtanding.) They that read and write *curſim et properantes*, are like Pilgrims, who have many Hoſts and few Friends; read much

much, and understand little *Vitam in peregrinatione agentibus hoc evenit, ut multa hospitia habeant, nullas amicitias; idem accidet his qui omnia cursim & properantes transcurrunt.* That meat that is presently avoided, profits not *Non prodest cibus qui statim emittitur* One Book well digested, is better then ten hastily slubbered over. Our Student therefore in reading must pick out some point wherein he may meditate. *Quam multa percurreris, unum exerpe quod concoquas.* And when that is sufficiently digested, he may fall to his reading again. *Certis ingeniis immorari & innutriri oportet, si velis aliquid trahere quod in animo fideliter edant.*

Therefore after a Case read, let him consider with himself, and meditate in his mind, to what several purposes the same case may be applied, and what matter the resolution of the said case can confirm. And once meditating of a Point is not sufficient, but at his leasure he should call his Memory to account for those things committed to it's charge some time

time before, and run it over again, *Altius quotidiana meditatione figendum est.* For upon the reading of a thing, to commit it to Memory without any more ado, is not the way to faſten it, ſo as to make it our own. Therefore I will conclude with *Seneca*: *Quæ didiceris affige tibi, ita ut excidere non poſſunt, non enim ut memoriæ tradidiſti ſatis.*

CHAP.

CHAP. IV.

Of the Time and Place of Study.

There is a time for every thing (ſaith the Wiſe man) and if ſo, there is a time for ſtudy too. Indeed every time is a time for Study. *Tempus quidem nullum eſt parum idoneum ſtudio ſalutari.* (There is no time that is not fit for wholeſome Study.) Yet ſome time is fitter then another, with is the old ſaying *Aurora muſis amica.* For the Spirits of our Bodies, following the diſpoſition of the Air, which in the morning at Sun-riſing is ſubtill and thin, pure and free from all groſs vapours and our Minds being of the ſame condition, are quick and nimble, the Pores of the Body opened, the Humours and Spirits enlarged, which maketh us more apt for Study. And being after reſt, the Spirits are ſtronger to encounter with difficulty and weighty

weighty matters, and after ſleep the Memory is moiſtned with the vapours ariſing out of the Stomach, and ſo made fitter and better diſpoſed to receive the figures of the matter conceived and apprehended. Therefore our Student muſt make uſe of the beſt part of the day, the morning called by the Phyſitians, *The golden hours.* And thoſe that change Morning to Evening, day to night, and fall to their Studies when others bid them adieu, thoſe Antipodes of Nature, that turn night into day, *Qui officia lucis noctiſque pervertunt*, do very much miſtake their time. For in the night the Air is thickned and corrupted with contagious Exhalations which poſſeſſing the Sences, do pierce into the brain and make it cloudy and heavy. And the Spirits being ſpent and conſumed by our motions in the days the Body is weak and unfit for any labour. And in the night the Body waxeth more dull, ſo that the mind cannot uſe it as a convenient Inſtrument. And late watchings weaken the

the vital Spirits, through too much intenſion, and exhauſt the native humility; which made *Ovid* ſay,

Attenuunt juvenum vigilatæ corpora noctes.

And *Seneca* ſaith, *Turpis eſt qui alto ſole ſemiſomnis jacet.* And the ſame Authour gives *L. Piſo.* a check for this cuſtom. *Uſque in horam ſextam fere dormiebat, hoc erat ejus matutinum*: the like he doth with ſome others of the ſame practice, of whom he ſaith, *Nec ante deducunt oculos quam appetere noctem cæpit*; being with them as with the Antipodes, whoſe Sun-ſetting is our riſing: *Qualis eorum conditio dicitur quos natura, ut ait Virgilius, pedibus noſtris ſubditos contrario poſuit.*

Moſque ubi primus equis oriens afflavit anhelis,
Illis ſera rubens accendit Lumina.

He muſt not ſtudy preſently after meat

meat; *Non eſt* (ſaith *Seneca*) *quod poſt cibum ſtudeas*, being very hurtful and deſtructive to the body. For; ſaith *Leſſius*, the exerciſes and imployments of the mind do very much hinder and diſturb the concoction, and that either becauſe in calling up the whole force of the ſoul, they do as it were abate and ſuſpend the power and actions of the inferiour faculties, as experience ſheweth, for when we are very intent on ſtudy, we neither hear the clock, nor take notice of any thing that comes before our eyes and other ſenſes; or elſe becauſe they do withdraw, not onely the animal but the Vital and Natural ſpirits themſelves from there proper ſervice And after meat thoſe vapours and fumes, which are cauſed by the meat taken down into the ſtomack, do clowd and overſhadow the clearneſs of the brain, and do offend and hinder the operations of the ſuperiour faculties to wit, of the Senſes the Imagination, the Underſtanding and the Memory: ſo that he cannot

either with ſafety or profit ſtudy preſently after meat.

And as there are hours of the day for ſtudy, ſo there are alſo of the mind. Therefore muſt our Student practiſe all things at two times eſpecially, the one, when the mind is beſt; the other when, it is worſt diſpoſed: that by the one he may give a greater ſtep, by the other he may work out the knots and ſtones of the mind, and ſo make the middle times the more eaſie and pleaſant to fix and Cheriſh the good hours of the mind, and to obliterate and take out the evil. And herein he muſt bear over to the contrary extream, of that whereunto he is by nature inclined. He muſt likewiſe conſider, that the mind is brought to any thing better and with more ſweetneſs and proficience, if that where unto he pretends be not firſt in the intention, but *tanquam aliud agendo*, becauſe of the natural hatred of the mind againſt neceſſity and conſtraint.

If our Student obſerve theſe Rules, he ſhall never think his ſtudy tedious,

tedious, but find it a remedy againſt all diſcontent grief and melancholly w' atſoever. Let him therefore wholly apply himſelf to the ſame, (*toto animo Studere*, in *Seneca* s phraſe) and when once familiarity with, acquaints him with the advantages of ſtudy, he ſhall find ſuch pleaſure and content treaſured therein, that none can conceive but they that enjoy them. VVitneſs he that ſaid, *Siquit familiariter ſtudium amare diſcerit, & ei ſæpius vocare valuerit, jucundam valde reddit vitam.*

And although every time is fit for ſtudy, yet muſt it not therefore take up all our time. For 'tis true that *Lipſius* ſaith *Ingenia vegetativa* muſt have *ſuos receſſus*; lively Wits muſt have their retrait or intermiſſion of exerciſe;& as Rams (engines of War in the antient times) receiled back to return with the greater force, ſo the mind doth unto Study after pauſe and reſt, *Animum aliquando debemus relaxare,& quibuſdam oblectamentis reficere.* We muſt ſometimes looſen our minds, and with ſome delights

or other refreſh them. He muſt not be ſtill poring on Books, for that makes him dull, and blunts the edge of the underſtanding. *Neq; ego te jubeo ſemper imminere libro aut pugillaribus, dandum et aliquod intervallum animo.* He muſt not ſit till he can ſit no longer, and have no other ſtage then wearineſs. *Sit ipſa lectio temperata, cui finem conſilium, non laſſitudo imponat.* And the ordering of Exerciſe is a matter of great conſequence to hurt or help us in ſtudy. For it is well obſerv d by *Cicero*, that men in exerciſing themſelves in Recreations if they be not well adviſed, exerciſe faults withal, and get ill habits as well as good; ſo as there is a great judgment to be had in the uſe, continuance, and intermiſſion of exerciſes. Our Student therefore muſt uſe ſome moderate Recreations ſuch as do not require any long time, or labour the mind over much. *Exercitationes faciles et breves, quæ corpus et ſine mora laxent, et tempori parcant* [Recreations ſhort and eaſie, which ſpeedily refreſh the body, and

ſpare

ſpare time.] His exerciſe therefore on the one ſide muſt not be violent or laborious, for ſuch do more hurt then help the body very much weaken the mind, and waſt the ſpirits. *Majore corporis ſaroine animus eliditur, et minus agilis eſt, et exercitationum labor ſpiritus exhaurit, et inhabilem intentioni et ſtudiis acrioribus reddit.* Nor may they on the other ſide be looſe and effeminate, our mind muſt be onely unbent not unſtrung; *Dandum intervallum animo, ita tamen ut non reſolvatur, ſed ut remittatus Corpori nec nego indulgendum, ſerviendum nego.* Such Recreations as require much labour, as Wreſtling, & the like do not become *heminem literarum*, a learned man: *Stultum eſt enim, mi Lucilli, & minime convenies literato viro occupatio exercendi lacertos, & dilatandi cervicem, ac latera firmandi.* And the Lord *Bacon* ſaith, that ſuch exerciſes are hurtful to the body, when ſtrength is extended and ſtrained to the uttermoſt, as Dancing, Wreſtling, and ſuch like. For it is certain, that the Spirits

being driven into ſtraits, either by the ſwiftneſs of the motion, or by the ſtraining of the forces, do afterwards become more eager and predatory. Nor do I ſpeak againſt a moderate ſtirring of the body: *Geſtaria et corpus concutit et ſtudio non officit, et mihi neceſſarium erat* (ſaith the ſame S*enec*a) *concuter corpus, ut ſi aliquo cauſa ſpiritus denſior erat, extenuaret illum jactatio, quam profuiſſe mi i ſenſi.* And the ſame Lord *Bacon* ſaith That exerciſes which ſtir up a good ſtrong motion, but not over-ſwift, or to our utmoſt ſtrength, as Shooting Leaping, Riding, Bowling, and the like, do not hurt, but rather benefit.

Recreation (ſaith *Cauſin*) the moſt innocent are ever the moſt commendable, and ſo certainly Shooting, Bowling and Angling, are moſt worth his exerciſe. The firſt is uſeful both in Peace and War, an honeſt paſtime for the mind, and a wholeſome exerciſe for the body. It provides meat for the ſtomach, and ſtomach for meat. It is the antienteſt of

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any antient as *Cain*, whom ſome ſay *Lamech* killed with a ſhaft Anciently practiſed by *Kings* and Emperours witneſs *Xenophon*, who ſaith that *Cyaxares* King of the *Medes*, *Aſteages* his ſon *Cyrus* and *Darius*, were skilfull in this art; nay, the latter was ſo taken with it, that he cauſed to be ingraved on his Monument, that he was exquiſite in ſhooting, *Domitian* the Emperour was ſo cuning therein, that he would ſhoot betwixt a mans fingers ſtanding at a diſtance. It is a quiet and harmleſs Exerciſe, yet doth it well deſerve the name of Exerciſe for it both increaſeth ſtrength and moſt preſerveth health, being not violent, but moderate, not overlaying any one part with wearineſs but equally exerciſing every part of the body. Shooting (ſaith the Lord *Bacon*) is good for the lungs and breſt. In a word, it is the onely Recration allowable in our Law, and being a lawful Recreation, is the moſt worthy of a Lawyer s practiſe.

Bowling (ſaith the ſame Lord *Bacon*)

con) is good for the Stone and Reins; and those that leads sedentery lives, as Students do, are most subject to these diseases; therefore doth in a maner enjoyn our Students exercise, thereof, *periculo incumbente*. It is an instructor of the Mathematicks, an innocent Recreation, doth moderately refresh the body, and very much quicken and sharpen the understanding.

Angling, the last, but not the worst of the three, is a *Recreation*, though tedious to some, yet full of pleasure and delight to others; and this is of antient standing too, Of its innocence there is no question, our Saviour himself being often present when the Apostles used the same And if you believe *Plutarch*, *Mark Anthony* amidst his wonderfull glory used Angling as a principal Recreation. So harmless a Recreation, that it is allowed to Clergy-men being a Recreation that invites to Contemplation and quietness, and used by them accordingly: witness Doctor *Whittaker*, Mr. *Noel*, and Mr *Perkins*:

kins: Sir *Henry Wotton* ſaith, That after tedious ſtudy it was a reſt to his mind, a clearer of his ſpirits, a diverſion of ſadneſs, a calmer of unquiet thoughts, a moderator of paſſions, a procurer of contendedneſs, and it begets habits of peace and patience in thoſe that practice it. It is a Recreation that doth not at all take up the mind, but gives it liberty for any contemplation therefore moſt befitting a Student; witneſs that Angler that ſaid,

My hand alone my work can do,
So I can fiſh and ſtudy too.

But let not Recreation get ſo much ground upon him as to make him forget it is but a Recreation, let him not ſpend too much time therein, but after ſome ſhort while return to his ſtudy again, following *Seneca*'s advice, who ſaith, *quicquid facies, cito redi a corpore ad animum illum diebus ac noctibus exerce, labore modico alitur ille*. (Whatſoever thou doſt, make a ſpeedy return from the body to

to the mind: exercise this day and night, for it is nourished with moderate labour, and refreshed with short recreations)

Ad studium multum confert locus, saith *Seneca*: [The place is a great furtherance to study) therefore it will not be amiss to add somewhat concerning it. And that must be somewhere apart, where quiet and silence are not interrupted. *Necessarium est silentium ad studia sepositæ.* For where noise disturbs his busied thoughts, and puts him behind-hand with himself, he cannot expect any solid progress in his studies, unless he be such as *Seneca* speaks of, *Cui mens inter clamatores tam varios, tam dissonos constat*; but *ad hoc trade perventur*, this is hardly attained to, saith he, not till he be such a one as this *Seneca* wished this *Lucilius*: *Tunc te scito esse compositum, cum ad te nullus clamor pertinebit, cum te nulla vox tibi excutiet.* (Know thee then to be composed, when no noise belongs to thee, when no cry can shake thee out of thy self,) whence may be con-

concluded, that Cities and places of confluence are offenſive to ſtudy, for the noiſes, cries, and tones that fill every corner, *Library varias exclamationes, & botularum & cruſtularium, & omnes popinarum inſtitores, merces ſuas quadam & inſignita modulatione vendentes*, will diſtract and confound his thoughts, and perhaps when moſt intent upon the moſt difficu t buſineſs. This made Sir *John Forteſcue* commend the ſituation of the Inns of Courts, for, ſaith he, This place of Study is not ſituate within the City, *Ubi confluentium turba ſtudentium quietem perturbare poſſit*, And certainly the thick vapours compaſſing Cities, make the air about them dull and foggy, which muſt needs have a great influence upon the Brain, and conſequently the Underſtanding too. All which Inconveniences are avoided in the Country, where the Air is ſharp and piercing, places quiet and ſilent, excellent walks, the comfort whereof, together with the fragrancy of the flowers and herbs, do much add to

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De leg. l. 2. and ſupply the waſted ſpirits. *Cicero* was much taken with this, when he ſaid, *Illo loco libentiſſime ſolco uti, ſive quid mecum ipſe cogito, ſive aliquid ſcribo aut lego, hoc vero nihil eſt amœnius.*

FINIS.